RECORD, CASE No. 14,702.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 518.

THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, PLAINTIFF IN ERROR,

vs.

HECTOR C. BOLLONG.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

FILED JUNE 24, 1891.

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INDEX.

	Original.	Print.
Writ of error	1	1
Return to writ of error	3	2
Citation	4	2
Proof of service of citation	5	2
Petition for writ of error	6	2
Allowance of writ of error	7	4
Caption	8	4
Petition in error	9	4
Transcript from district court	13	7
Amended petition	13	7
Motion to strike out part of petition	34	19
Order overruling motion to strike out	35	19
Motion to dismiss	35	20
Order overruling motion to dismiss	36	20
Motion to strike amended petition from the files	36	20
Order overruling motion to strike from the files	37	20
Amended answer	37	21

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 13, 1893.

	Original.	Print.
Reply	39	22
Order beginning hearing	40	22
Order taking cause under advisement	40	23
Defendant's requests for findings	41	23
Findings of the court	43	25
Findings of fact	45	26
Conclusions of law	46	26
Exceptions of defendant to findings	47	27
Order overruling exceptions	51	29
Motion for new trial	51	29
Order overruling motion for new trial	55	31
Judgment	55	31
Bill of exceptions	57	32
Testimony of H. C. Bollong	57	32
C. E. Sumner	133	86
Wm. H. Sumner	136	89
H. C. Bollong (recalled)	159	104
Stenographer's certificate	166	109
Judge's certificate	166	109
Clerk's certificate	166	109
Exhibit No. 1—Promissory note of December 8, 1885	168	109
No. 2—Promissory note of January 9, 1886	168	110
No. 3—Promissory note of April 12, 1886	169	110
No. 4—Promissory note of November 7, 1885	169	111
No. 5—Chattel mortgage, November 7, 1885	170	111
No. 6—Promissory note of February 15, 1886	174	113
No. 7—Endorsement	174	113
No. 8—Certificate of deposit, May 5, 1884	174	114
No. 9—Certificate of deposit, May 5, 1884	175	114
No. 10—Check of Sumner Bros., December 8, 1885	175	114
No. 11—Check of Sumner Bros., January 12, 1886	176	114
No. 12—Check of Sumner Bros., November 7, 1885	176	115
No. 13—Check of Sumner Bros., December 10, 1885	176	115
No. 14—Check of Sumner Bros., February 15, 1886	176	115
No. 15—Chattel mortgage, May 5, 1884	177	115
No. 16—Promissory note of May 15, 1886	180	117
No. 17—Promissory note of April 26, 1886	181	118
No. 18—Opinion and judgment in Bank *vs.* Bollong	181	118
No. 19—Petition in Bollong *vs.* Bank	185	120
Consent as to settlement of bill of exceptions	200	128
Clerk's certificate	200	128
Summons in error	202	129
Judgment	203	130
Opinion	204	130
Assignment of errors	211	133
Bond on writ of error	216	136
Clerk's certificate	219	137

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Nebraska, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Nebraska, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Schuyler National Bank of Schuyler, Nebraska, plaintiff in error, and Hector C. Bollong, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or
2 statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and ninety-one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

3 Supreme Court of Nebraska, *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same, to wit, the writ of error, citation, with acknowledgment of service, assignment of errors, and copy of bond.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court, at the city of Lincoln, this 20th day of June, 1891.

[Seal Supreme Court of Nebraska.]

D. A. CAMPBELL, *Clerk.*

4 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Hector C. Bollong, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme ceurt of the State of Nebraska, wherein The Schuyler National Bank of Schuyler, Nebraska, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ o ferror mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 26th day of May, in the year of our Lord one thousand eight hundred and ninety-one.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

5 On this nineteenth day of June, in the year of our Lord one thousand eight hundred and ninety-one, personally appeared E. T. Hodsdon before me, the subscriber, Joseph Zerzan, a notary public duly commissioned and qualified for and residing in Colfax county, Nebraska, and makes oath that he delivered a true copy of the within citation to C. J. Phelps and J. A. Grimison, the attorneys of record of the said defendant in error, Hector C. Bollong, at Schuyler, in Colfax county, Nebraska, on the day and date last above written.

Sworn to and subscribed the nineteenth (19th) day of June, A. D. 1891.

[Notarial Seal J. Zerzan, Schuyler, Colfax County, Nebraska.]

JOSEPH ZERZAN,
Notary Public.

6 To the Honorable David J. Brewer, justice of the Supreme Court of the United States:

Your petitioner, The Schuyler National Bank of Schuyler, Nebraska, respectfully shows to your honor:

First. A final judgment was rendered in the supreme court of the State of Nebraska, being the highest court of the State in which a decision in the suit could be had, on the 6th day of May, A. D. 1891, in a suit wherein The Schuyler National Bank was plaintiff in error and Hector C. Bollong was defendant in error, in the sum of $1,601.84 and costs of suit.

Second. This action was commenced in the district court of Colfax county, Nebraska, by Hector C. Bollong against your petitioner, The Schuyler National Bank of Schuyler, Nebraska, under sections 5197 and 5198 of the Revised Statutes of the United States, to recover double the amount of usurious and illegal interest alleged to have been charged and received by said Schuyler National Bank of Schuyler, Nebraska, to and from the said Hector C. Bollong; and, jury being waived, the cause was heard by the court, and on the 16th day of November, A. D. 1889, the court made findings of fact to the effect that certain loans were usurious; that on those usurious loans the said bank had received $800.92, and the said plaintiff was entitled to recover in double the amount of interest actually paid. The court also made findings that certain causes of action set forth in the petition were not barred by said statutes. The plaintiff bank filed exceptions and also a motion for a new trial on the ground that under the statute the defendant could recover only double the usurious interest, whereas the court found that the plaintiff must pay double the whole interest instead of double the usurious interest, and that the same was contrary to law. The
7 plaintiff bank also filed exceptions and motion for new trial on the ground that under said statutes the defendant could not recover, since his causes of action were barred by said statute, whereas the court found that said causes of action were not barred by said statute.

The plaintiff in error also objected to the jurisdiction of the court to try and determine the subject-matter of the action.

On the 17th day of December, A. D. 1889, proceedings in error were commenced in the supreme court of the State of Nebraska to reverse said judgment.

Subsequently this cause came on for argument and final hearing in the supreme court of the State of Nebraska, and thereupon, after due consideration — the several assignment of errors, — overruled the same and affirmed the judgment, as will appear from the opinion of the court attached to the record here presented with this application for the inspection of the court.

Wherefore your petitioner prays for the allowance of a writ of error by the Supreme Court of the United States and such other and — process as will enable the petitioner to obtain a review of the case and a correction of the errors alleged.

THE SCHUYLER NATIONAL BANK
OF SCHUYLER, NEBRASKA,
By WILLIAM TWOMBLY,
Attorney for said Bank.

May 26, 1891.—Let the writ of error be issued.

DAVID J. BREWER,
Associate Justice Sup. Ct U. S.

8 Supreme Court of Nebraska.

SCHUYLER NATIONAL BANK
v.
HECTOR C. BOLLONG.

Pleas before the honorable the supreme court of the State of Nebraska at a term thereof begun and holden at the capitol, in the city of Lincoln, in said State, on the 6th day of January, A. D. 1891.

Present: Hon. Amasa Cobb, chief justice; Hon. Samuel Maxwell, Hon. T. L. Norval, judges.

Attest: D. A. CAMPBELL, *Clerk.*

Be it remembered that on the 17th day of December, 1889, there was filed in the office of the clerk of said supreme court a certain petition in error, transcript, and bill of exceptions in words and figures following, to wit:

9 In the Supreme Court of Nebraska.

THE SCHUYLER NATIONAN BANK OF SCHUYLER, NEBRASKA, Plaintiff in Error,
vs.
HECTOR C. BOLLONG, Defendant in Error.
} Petition in Error.

The plaintiff complains of the defendant for that on the 16th day of November, A. D. 1889, the defendant herein recovered a judgment against the plaintiff herein in the district court of Colfax county, Nebraska, for the sum of $1,601.84 and $— costs of suit in an action pending in said court, wherein the defendant herein was plaintiff and the plaintiff herein defendant. A transcript of the proceedings containing said final judgment is filed herewith. The plaintiff alleges that there is error in said proceedings and judgment in this:

First. That the court erred in overruling the motion of the plaintiff in error to strike from the petition of the defendant in error the irrelevant, redundant, and scandalous matter therein contained.

Second. That the court erred in overruling the plaintiff in error's motion to dismiss for want of jurisdiction to try and determine the subject-matter of said action.

Third. That the court erred in overruling the motion of the plaintiff in error to strike the alleged amended petition of the defendant in error from the files of the court for that the court had no authority to allow the said alleged amendments, and that each and every cause of action stated in said alleged amended petition is a

new and different cause of action than that stated in the
10 alleged original petition filed herein, and that the same were each and every one of them barred at the time of the commencement of this action and the filing of the said amended petition herein and at the appearance thereto by the said plaintiff in error.

Fourth. That there is error in the assessment of the amount of the recovery in this, to wit, that the court permitted the plaintiff to recover twice the full amount of interest found to have been paid by the defendant in error to the plaintiff in error, whereas he was only entitled to recover, if at all, twice the amount paid in excess of the legal rate of interest within two years of the commencement of this action.

Sixth. That the court erred in admitting any evidence over the objection of the plaintiff in error thereto under the several alleged causes of action in said amended petition, since each and every one of said causes of action were at the time of filing of said alleged amended petition and the entry of appearance thereto by the plaintiff in error and at the commencement of the action, the said original paper-writing filed herein entirely failing to state any cause of action whatever, barred by the statute under which they were brought, to wit, section 5198 of the Revised Statutes of the United States.

Seventh. That the court erred in permitting the defendant in error to recover under the seventh cause of action in said alleged amended petition stated, since the same was barred before the commencement of this action by the statute under which said action was brought, to wit, sections 5197 and 5198 of the Revised Statutes of the United States, and that the same did not accrue to the defendant in error alone, but to him and one Neil Bollong, now living.

11 Eighth. That the court errer in permitting the defendant in error to recover under the first, seventh, eighth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, nineteenth, twentieth, twenty-third, twenty-fourth, and twenty-fifth causes of action set forth in said amended petition because the same did not accrue to the defendant in error alone, but to him and one Neil Bollong, now living.

Ninth. That the court erred in permitting the defendnat in error to recover under the second, third, fourth, fifth, sixth, ninth, tenth, and eleventh causes of action set forth in said alleged amended petition because said causes did not accrue to the defendant in error alone, but to him and one Thomas L. Palmer, now living.

Tenth. That the court erred in permitting the defendant in error to recover under the twenty-ninth cause of action set forth in the defendant in error's amended petition because said cause of action did not accrue to the defendant in error alone, but to him and one Neil R. Bollong, who is still living.

Eleventh. That the court erred in permitting the defendant in error to recover under the thirtieth cause of action set forth in said alleged amended petition because said cause of action did not

accrue to the defendant in error alone, — to him and Thomas L. Palmer and Neil Bollong, who are still living.

Twelfth. That the court erred in permitting the defendant in error to recover under the sixteenth, twenty-fifth, twenty-eighth, and thirty-first causes of action in said alleged amended petition stated because the said sums therein alleged to have been paid as interest on the loans therein mentioned were not paid in pursuance of any previous agreement so to do nor the same paid nor taken for the forbearance of a debt or a sum of money due.

Thirteenth. That the court erred in permitting the defend-
12 ant in error to recover herein the sum of $1,601.84 because the law and evidence does not warrant a recovery in so large an amount.

Fourteenth. That the court erred in refusing to find the first, second, third, fifth, and sixth conclusions of law requested by the plaintiff in error, as set forth in said request, and in finding the conclusions of law set forth in the second, third, and fifth conclusions of law filed herein by said court.

Fifteenth. That the court erred in refusing to find the first, second, third, and fifth request- for conclusions of facts in said plaintiff in error's request for such findings as therein asked for and in making the findings of fact herein made in pursuance of said request.

Sixteenth. Errors of law accruing at the trial and duly excepted to.

Seventeenth. That the findings and decision of the court herein are not sustained by sufficient evidence and are against the clear weight thereof.

Eighteenth. That the findings and decision of the court herein are contrary to law.

Nineteenth. That the court erred in finding that the allegations of the said amended petition are sustained by sufficient evidence.

Twentieth. That the court erred in overruling the motion for a new trial made by the plaintiff in error.

The said plaintiff in error therefore prays that said judgment may be reversed and a new trial granted in said cause and for such other relief as justice may require.

THE SCHUYLER NATIONAL BANK
OF SCHUYLER, NEBRASKA,
By its attorney, E. T. HODSDON.

13 (Endorsed:) 4026. In the supreme court of Nebraska. The Schuyler National Bank *vs.* Hector C. Bollong. Petition in error. E. T. Hodsdon, att'y.

Transcript.

THE STATE OF NEBRASKA, } ss:
Colfax County, }

Pleas before the district court of Colfax county, at a term begun and holden in the county of Colfax *county* on the 14th day of October, A. D. 1889, before William Marshall, one of the judges of said district court.

HECTOR C. BOLLONG, Plaintiff,
vs.
THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA.

Be it remembered that heretofore, to wit, on the 11th day of January, A. D. 1889, an amended petition was filed in the office of the clerk of the district court of Colfax county in the words and figures following, to wit:

(Copy.)

In the District Court of Colfax County, Nebraska.

HECTOR C. BOLLONG, Plaintiff,
vs.
THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, Defendant. } Amended Petition.

And now comes the plaintiff, by leave of court first obtained, and for an amended petition says—

14 That the defendant, The Schuyler National Bank of Schuyler, Nebraska, is a corporation organized and doing business, under and by virtue of the laws of the United States relating to national banks, at Schuyler, in said Colfax county, as a banking association, and that defendant was so organized and doing business during the happening of all and each of the events and facts hereinafter complained of.

First. And for a first cause of action the plaintiff, complaining of the defendant, says that on or about the 19th day of June, 1885, being indebted to the defendant in the sum of $1,500, he executed his certain promissory note of that date therefore, due ninety days thereafter, and on the same day he paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $46.50 as and for interest on said sum of $1,500 for the term and time of ninety days in advance; that the said payment of interest so as aforesaid paid by plaintiff to defendant and by defendant knowingly contracted for and received from the plaintiff was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at the rate of 12 per cent. per annum, and was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action, and by the violation of the said

statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $93, no part of which has been paid.

Second. And for a second cause of action the plaintiff, complaining of the defendant, says that on or about the 18th day of September, 1885, the plaintiff executed and delivered to the defendant a new note for said sum of $1,500, and on the same day paid to
15 the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $46.50 as and for interest on said sum of $1,500 for the term and time of ninety days in advance; that said payment of interest so as aforesaid paid by plaintiff to defendant and by defendant knowingly contracted for and received from the plaintiff was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at the rate of 12 per cent. per annum, and was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action, and by the violation of said statutes of the United States the defendant became indebted to the plaintiff in the sum of $93, no part of which has been paid.

Third. And for a third cause of action the plaintiff, complaining of the defendant, says that on or about the 21st day of December, 1885, the plaintiff executed and delivered to the defendant a new note for said sum of $1,500, and on the same day paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $69.75 as and for interest on said sum of $1,500 for the term and time of ninety days in advance; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by defendant knowingly contracted for and received was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action, and by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $139.50, no part of
16 which has been paid.

Fourth. And for a fourth cause of action the plaintiff, complaining of the defendant, says that on or about the 26th day of April, 1886, the plaintiff executed and delivered to the defendant a new note for said sum of $1,500, and on the same day paid to defendant and defendant knowingly contracted for and received from the plaintiff the sum of $69.75 as and for interest on said sum of $1,500 for the term and time of ninety days in advance; that said payment of interest so as aforesaid paid by the plaintiff to defendant and by defendant knowingly contracted for and received from the plaintiff was at a — rate of interest than is allowed by the laws of the State of Nebraska and was at the rate of 18 per cent. per annum, in violation of section *of* 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said

statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $139.50.

Fifth. And for a fifth cause of action the plaintiff, complaining of the defendant, says that on or about the 26th day of April, 1886, the note mentioned in the third cause of action for $1,500 being thirty-four days past due, the plaintiff paid to the defendant and defendant knowingly contracted for and received from the plaintiff the sum of $24.85 as and for interest on said sum of $1,500 for the term and time of 34 days; that said payment of interest so as aforesaid paid by plaintiff to defendant and by the defendant knowingly contracted for and received from the plaintiff was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of sec-
17 tion 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $49.70, no part of which has been paid.

Sixth. And for a sixth cause of action the plaintiff, complaining of the defendant, says that on or about the 4th day of October, 1886, said last-above described note being sixty days past due, plaintiff paid to the defendant and defendant knowingly contracted for and received from plaintiff the sum of $49.50 as and for interest on said sum of $1,500 for the term and time of 66 days; that said payment of interest as aforesaid paid by the plaintiff to defendant and by defendant knowingly contracted for and received from the plaintiff was at a greater — than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $99, no part of which has been paid.

Seventh. And for a seventh cause of action the plaintiff, complaining of the defendant, says that on or about the 5th day of May, 1884, the plaintiff borrowed of and from the defendant the sum of $2,600 and endorsed an accommodation note therefor to the defendant, and on the same day the defendant knowingly contracted for and retained out of said sum of $2,600 the sum of $80.60 as and for interest for the term of ninety days in advance, and paid over to the plaintiff the sum of $2,519.40; that said note for
$2,600 was renewed from time to time and said interest so
18 retained was carried in said renewal notes until the 19th day of June, 1885, when eleven hundred thereof was paid by plaintiff to defendant, and the balance of $1,500, including said $80.60 so as aforesaid on the 5th day of May, 1884, retained as interest, was still continued and retained through all the notes described and set out in the several causes of action preceding this, and on the 4th day of October, 1886, said sum of $80.60 was knowingly taken and received by defendant and by plaintiff paid as and for interest of said sum of $2,600 for the term and time of ninety

days; that said payment of interest so as aforesaid paid by plaintiff to defendant and by defendant knowingly contracted for and received from the plaintiff was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statute of the United States said defendant became and is indebted to the plaintiff in the sum of $161.20, no part of which has been paid.

Eighth. And for an eighth cause of action the plaintiff, complaining of the defendant, says that on or about the 19th day of June, 1885, the plaintiff, being indebted to the defendant upon a note for $2,600, made and executed on the 27th day of February, 1885, due ninety days thereafter, paid, as and for interest upon said sum of $2,600 for the time and term of thirty days, and the defendant knowingly contracted for and took and received the sum of $28.60; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a rate of interest greater than is allowed by the laws of the State of Nebraska,
19 and was at the rate of 12 per cent., and was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $57.20, no part of which has been paid.

Ninth. And for a ninth cause of action the plaintiff, complaining of the defendant, says that on or about the 26th day of May, 1884, the plaintiff borrowed of and from the defendant the sum of $1,500, and on the same day executed his note therefor, due ninety days therefrom, and on the same day the defendant knowingly contracted for and retained out of said sum of $1,500 the sum of $76.50 as and for interest on said sum of $1,500 for the term of ninety days, and paid to plaintiff $1,423.50 and no more upon said loan; that thereafter said note was renewed from time to time, and said sum of $76.50 so as aforesaid reserved as interest upon said sum of money was retained and carried in said renewed notes, and on the 4th day of October, 1886, plaintiff paid defendant and defendant knowing received said sum of $76.50 as and for interest on said sum of $1,500 for the term and time of 90 days; that said payment of interest so as aforesaid paid by plaintiff to defendant and by defendant knowingly contracted for and received from plaintiff was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation — section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $153, no part of which has been paid.

20 Tenth. And for a tenth cause of action the plaintiff, complaining of the defendant, says that on or about the 29th day of May, 1885, the plaintiff, being indebted to the defendant in the sum of $1,500, executed and delivered his note therefor to the defendant, and on the same day the plaintiff paid to the defendant as and for interest therefor for the term and time of ninety days the sum of $46.50, and the defendant knowingly contracted for and received said sum for interest so as aforesaid; that said payment of interest so as aforesaid made by plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at the rate of 12 per cent., and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $93, no part of which has been paid.

Eleventh. And for an eleventh cause of action the plaintiff, complaining of the defendant, says that on or about the 31st day of August, 1885, the defendant paid *said on* indebtedness the sum of $500 and executed and delivered to the defendant a new note for the remaining $1,000 thereof, and on the same day he paid the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $31 as and for interest on said sum of $1,000 for the term and time of ninety days in advance; that said payment of interest so as aforesaid made by the plaintiff to the defendant and by the defendant knowingly contracted for and received was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at a rate of 12 per cent. per annum, and

21 occurred within two years prior to the commencement of this action, and was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $62, no part of which has been paid.

Twelfth. And for a twelfth cause of action the plaintiff, complaining of the defendant, says that on or about the 2nd day of Dec., 1885, the plaintiff paid upon said note the sum of $600, and on the 5th day of December, 1885, executed and delivered a new note for the remaining $400 thereof, and upon the same day paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $6.60 as and for interest upon said sum of $400 for the term and time of thirty days in advance; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 12 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States

the defendant became and is indebted to the plaintiff in the sum of $13.20, no part of which has been paid.

Thirteenth. And for a thirteenth cause of action the plaintiff says that on or about the 4th day of January, 1886, he executed and delivered a new note for said sum of $400, due ninety days after the date thereof, and upon the same day paid to the defendant and the defendant knowingly contracted for and received *for and received*
from the plaintiff the sum of $18.60 as and for interest on
22 said sum of $400 for the term and time of ninety days in advance; that by the said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $37.20, no part of which has been paid.

Fourteenth. And for a fourteenth cause of action the plaintiff says that on or about the 7th day of April, 1886, the plaintiff executed a new note for said sum of $400, payable thirty days from the date thereof, and upon the same day he paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $6.60 as and for interest on said sum of $400 for the time and term of thirty days in advance; that said payment of interest so as aforesaid made by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United Statutes, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes the defendant became and is indebted to the plaintiff in the sum of $13.20, no part of which has been paid.

Fifteenth. And for a fifteenth cause of action the plaintiff says
that on or about the 11th day of May, 1886, the plaintiff exe-
23 cuted a new note for said sum of $400, payable ninety —
therefrom, and upon the same day he paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $18.60 as and for interest on said sum of $400 for the time and term of ninety days in advance; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant

became and is indebted to the plaintiff in the sum of $37.20, no part of which has been paid.

Sixteenth. And for a sixteenth cause of action the plaintiff says that on or about the 15th day of May, 1886, the plaintiff being indebted to the defendant in said sum of $400 and divers other sums, amounting in the aggregate to the sum of $1,150, executed and delivered to the defendant his promissory note for said sum of $1,150, due ninety days from the date thereof, and that upon the 4th day of October, 1886, said note being still due and unpaid, the plaintiff paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $27.63 as and for interest on said sum of $1,150 for the term and time of thirty-eight days, being the time said note was then past due; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by
the defendant knowingly contracted for and received from
24 the plaintiff was at a greater rate of interest than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $55.76, no part of which has been paid.

Seventeenth. And for a seventeenth cause of action the plaintiff says that on or about the 8th day of December, 1885, the plaintiff borrowed from the defendant the sum of $500, and on the same day executed his promissory note therefor, due thirty days therefrom, and paid to the defendant and the defendant knowingly contracted for and retained out of said sum of $500 the sum of $7.50 as and for interest on said sum of $500 for the term and time of thirty days in advance, and paid to the plaintiff $492.50 and no more upon said loan, and that upon the 4th day of October, 1886, he paid to the defendant and the defendant knowingly contracted for and received said sum of $7.50 as and for interest on said sum; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statute of the United States the defendant became and is indebted to the plaintiff in the sum of $15, no part of which has been paid.

Eighteenth. And for an eighteenth cause of action the
25 plaintiff says that on or about the 9th day of January, 1886, the plaintiff borrowed of and from the defendant the sum of $100 in addition to said $500 and executed his promissory note for said sum of $600, due ninety days therefrom, and upon the same day he paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $27 as and

for interest upon said sum of $600 for the term and time of ninety days in advance; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the defendant was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the *defendant* in the sum of $55, no part of which has been paid.

Nineteenth. And for a nineteenth cause of action the plaintiff says that on or about the 12th day of April, 1886, the plaintiff borrowed from the defendant the sum of $100 in addition to said sum of $600 and executed his promissory note for said sum of $700, due thirty days from the date thereof, and upon the same day he paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $10.50 as and for interest upon said sum of $700 for the term and time of thirty days in advance; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at *the* rate of interest greater than is allowed by the laws of the State of Ne-
26 braska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $21, no part of which has been paid.

Twentieth. And for a twentieth cause of action the plaintiff says that on or about the 15th day of May, 1886, sum of $700 being due and unpaid and the plaintiff being indebted to the defendant in other sums, amounting in the aggregate to the sum of $1,150, he executed to the defendant his promissory note for said sum of $1,150, due and payable ninety days from the date thereof, and upon the same day paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $31.50 as and for interest on said sum of $700 thereof for the term and time of ninety days; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $63, no part of which has been paid.

Twenty-first. And for a twenty-first cause of action the plaintiff says that on or about the 7th day of November, 1885, the plaintiff

borrowed of and from the defendant the sum of $1,000 and executed his promissory note therefor, due thirty days from the
27 date thereof, to the defendant, and on the same day the defendant knowingly contracted for and retained out of said sum of $1,000 the sum of $16.50 as and for interest on said sum of $1,000 for the term and time of thirty days in advance and paid over to the plaintiff the sum of $983.50; that said sum of $16.50 so as aforesaid retained by the defendant out of said loan of $1,000 was paid by the plaintiff to the defendant on the 4th day of October, 1886; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $33, no part of which has been paid.

Twenty-second. And for a twenty-second cause of action the plaintiff says that on or about the 10th day of Dec., 1885, the plaintiff executed a new note for said sum of $1,000, due ninety days from the date thereof, and upon the same day he paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $46.50 as and for interest on said sum of $1,000 for the term and time of ninety days in advance; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198
28 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is so indebted to the plaintiff in the sum of $93, no part of which has been paid.

Twenty-third. And for a twenty-third cause of action the plaintiff says that on or about the 13th day of March, 1886, he received a new note for said sum of $1,000, due ninety days from the date thereof, and upon the same day paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $46.50 as and for interest on said sum of $1,000 for the term and time of ninety days in advance; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of of the United States the defendant became and is indebted to the

said statute *defendant* in the sum of $93, no part of which has been paid.

Twenty-fourth. And for a twenty-fourth cause of action the plaintiff says that on or about the 14th day of June, 1886, the plaintiff executed a new note for said sum of $1,000, due sixty days from the date thereof, and on the same day he paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $31.50 as and for interest on said sum of $1,000
29 for the term and time of sixty days in advance; that said payment and interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a rate of interest greater than is allowed by the law of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statute of the United States the defendant became and is indebted to the plaintiff in the sum of $62, no part of which has been paid.

Twenty-fifth. And for a twenty-fifth cause of action the plaintiff says that on the 4th day of October, 1886, said note described in the last above described cause of action being then forty-nine days past due, the plaintiff paid to the defendant and the defendant knowingly contracted for and received from the plaintiff the sum of $24.00 as and for interest on said sum of $1,000 for the term and time of 49 days; that said payment of interest so as aforesaid paid by the plaintiff and by the defendant knowingly contracted for and received from the plaintiff was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $48, no part of which has been paid.

Twenty-sixth. And for a twenty-sixth cause of action the plaintiff says that on or about the 15th day of February, 1886, the plaintiff borrowed of the defendant the sum of $300 and executed to
30 the defendant his promissory note therefor, due ninety days thereafter, and upon the same day the defendant knowingly contracted for and retained out of said sum of $300 the sum of $13.50 as and for interest on said sum of $300 for the term and time of 90 days in advance and paid to the plaintiff the sum of $286.50 and no more upon said loan, and that on the 4th day of October, 1886, plaintiff paid to defendant said sum of $13.50, and defendant knowingly contracted for and received the same as and for interest so as aforesaid reserved; that said payment of interest so as aforesaid paid by the plaintiff and by the defendant knowingly contracted for and received was at a greater rate *on* interest than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent., and was in violation of section 6198 of the Rev. Statutes of the

United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $27, no part of which has been paid.

Twenty-seventh. And for a twenty-seventh cause of action the plaintiff says that on or about the 14th day of July, 1886, plaintiff borrowed of the defendant the sum of $100 and executed his promissory note to the defendant therefor, payable thirty days thereafter, and on the same day the defendant retained out of said sum *of* $1.50 as and for interest on the same for thirty days and paid to the plaintiff $98.50 thereof, and that on the 4th day of October, 1886, the plaintiff paid to the defendant said sum of $100, including said sum of $1.50 so retained, and the defendant knowingly contracted for and received the same as and for interest on said sum of $100 for
31 thirty days. The said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent., and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $3.00, no part of which has been paid.

Twenty-eighth. And for a twenty-eighth cause of action the plaintiff says that on or about the 4th day of October, 1886, said sum of $100 being forty-nine days past due, the plaintiff paid to the defendant the sum of $2.40, and the defendant knowingly contracted for and received the same as and for interest on said sum of $100 for said 49 days; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $4.80, no part of which has been paid.

32 Twenty-ninth. And for a twenty-ninth cause of action the plaintiff says that on or about the 11th day of May, 1885, plaintiff borrowed from the defendant the sum of $225 and executed to the defendant his promissory note therefor, payable ninety days thereafter, and upon the same day plaintiff paid to the defendant and defendant knowingly contracted for and received from the plaintiff the sum of $10.50 as and for interest on said sum of $225 for the term of ninety days; that said payment of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a rate of interest greater than is allowed by the laws of the State of Nebraska,

and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum of $21, no part of which has been paid.

Thirtieth. And for a thirtieth cause of action the plaintiff says that on or about the 4th day of October, 1886, an accounting was had between the plaintiff and defendant, whereby a balance was found to be due from the plaintiff to the defendant in the sum of $1,390.21, and upon the same day plaintiff executed to the defendant his promissory note for the sum of $1,435, due ninety days thereafter; that upon the same day the defendant knowingly contracted for the sum of $44.79 as and for interest on said sum of $1,390.21 for ninety days, in advance, and added the same to the principal sum on said promissory note; that upon the 21st day of January, 1887, the plaintiff paid to the defendant the full amount of said promissory note, and defendant knowingly received the same; that said payment of interest so as aforesaid paid by the plaintiff
33 to the defendant and by the defendant knowingly contracted for and received from the plaintiff was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statute of the United States the defendant became and is indebted to the plaintiff in the sum of $89.58, no part of which has been paid.

Thirty-first. And for a thirty-first cause of action the plaintiff says that on or about the 27th day of January, 1887, $1,000 of said sum of $1,435 being sixteen days past due, the plaintiff paid to defendant and defendant knowingly contracted for and received from the plaintiff the sum of $5.00 as and for interest upon said sum of $1,000 for said term of 16 days; that said payment of interest so as aforesaid paid by plaintiff to defendant and by defendant knowingly contracted for and received was at a rate of interest greater than is allowed by the laws of the State of Nebraska, and was at the rate of 18 per cent. per annum, and was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; that by the violation of said statute of the United States the defendant became and is indebted to the plaintiff in the sum of $10, no part of which has been paid.

That the several sum- of money so as aforesaid paid by the plaintiff to the defendant as interest, and by the defendant knowingly and unlawfully contracted for and received from the plaintiff, amount in the aggregate to the sum of $967.27, whereby and
34 by virtue of the defendant's violation of said section 5198 of the Revised Statutes of the United States defendant became and is indebted to the plaintiff in the sum of $1,934.54, for which

the plaintiff demands judgment, together with his costs herein expended.

(Signed) C. J. PHELPS AND
J. A. GRIMISON,
Attorneys for Plaintiff.

THE STATE OF NEBRASKA, } ss:
Colfax County, }

Hector C. Bollong, being first duly sworn, deposes and says that he is the plaintiff in the above-entitled action; that he has heard read the foregoing petition of his and knows its contents, and that the same are true as he verily believes.

(Signed) HECTOR C. BOLLONG.

Subscribed and sworn to before me this — day of January, A. D. 1889.

(Signed) C. O. SABIN,
Notary Public.

And afterwards, on the 31st day of January, 1889, the defendant filed a motion in the words and figures, to wit:

In the District Court of Colfax County, Nebraska.

HECTOR C. BOLLONG, Plaintiff,
vs.
THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA. } Motion.

The defendant moves the court to strike out of the petition of the plaintiff in each and every of the several causes of action therein stated the following words, to wit: "So as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly
35 contracted for and received from the plaintiff," because the same are irrelevant, redundant, and superfluous; also, "corrupt, usurious, and occurred within two years prior to the commencement of this action," because the same are irrelevant, redundant, superfluous, and scandalous.

(Signed) SCHUYLER NATIONAL BANK OF
SCHUYLER, NEBRASKA,
By its att'y E. T. HODSDON.

And now, on this 19th day of March, 1889, it being the — day of the adjourned March, A. D. 1889, term of said court, this cause *coming* on for hearing upon the motion heretofore filed herein by the defendant to strike certain matter from the petition of the plaintiff herein, on consideration whereof the court overruled said motion; to which ruling of the court the defendant excepts.

And afterwards, to wit, on the 20th day of March, 1889, the defendant filed a motion in the words and figures following, to wit:

In the District Court of Colfax County, Nebraska.

HECTOR C. BOLLONG, Plaintiff,
vs.
THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, Defendant. } Motion.

Comes now the said defendant and moves the court to dismiss the above-entitled action, and for grounds of its motion says:

First. That this court has no jurisdiction to try and determine the subject-matter of the above-entitled action.

Second. That exclusive jurisdiction is by the laws of the
36 United States, to wit, section 711 of the Revised Statutes of the United States, vested in the courts of the United States to try and determine the subject-matter of the above-entitled action.

(Signed) E. T. HODSDON,
Attorney for the Defendant.

And now, on the 20th day of March, A. D. 1889, it being the 3 day of the adjourned March, 1889, term, this cause *coming* on for hearing upon motion by the defendant to dismiss for want of jurisdiction of this court, on consideration whereof the court overruled said motion; to which ruling of the court the defendant excepts.

And afterwards, to wit, on the 25th day of March, 1889, the defendant filed a motion in the words and figures following, to wit:

In the District Court of Colfax County, Nebraska.

HECTOR C. BOLLONG, Plaintiff,
vs.
THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, Defendant. } Motion.

Comes now the defendant and moves the court to strike from the files of the court the alleged amended petition filed herein and for grounds of its motion says:

First. That this court is vested with no authority under the law to allow said amendments as the same are set forth in said alleged amended petition.

Second. That each and every of said alleged amendments insert new and different causes of action, and each and every cause of action set up in said alleged amended petition are different causes of action and are not the identical causes of action stated in the
37 original paper-writing filed herein and alleged to be a petition.

(Signed) E. T. HODSDON,
Attorney for the Defendant.

And now, on this 25th day of March, 1889, this cause came on to be heard upon the motion by the defendant to strike the petition of

the plaintiff herein from the filed, on consideration whereof the court overrules said motion; to which — of the court the defendant excepts.

And afterwards, to wit, on the 26th day of August, 1889, there was filed in the office of said clerk an amended answer in the words and figures following, to wit:

In the District Court of Colfax County, Nebraska.

HECTOR C. BOLLONG, Plaintiff,
vs.
THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, Defendant. } Amended Answer.

The defendant, by leave of court first had and obtained, answers to the amended petition of the plaintiff above mentioned and alleges:

First. That the said alleged amended petition was filed in this court on the 11th day of January, A. D 1889; that on the 19 day of March, A. D. 1887, a certain paper-writing was filed in this court, which contained the names of the parties herein, which was denominated a petition and to which other pleadings were filed as required by law, and proceedings and trial were had in this court on
38 said pretended issues, so made up as aforesaid; that the defendant herein afterwards prosecuted a petition in error on said judgment to the supreme court of the State of Nebraska, and at the July, A. D. 1888, term of said supreme court, to wit, on November 21st, A. D. 1888, it was, upon consideration by said supreme court, duly adjudged that said paper-writing filed on March 19, A. D. 1887, was not a petition, and the above-mentioned judgment was by reason thereof, on said 21st day of November, 1888, duly reversed by said supreme court; that each and every cause of action stated in said alleged amended petition did not accrue within two years next before the commencement of this action and did accrue within two years next before the filing of the amended petition herein, as provided by sections 5197 and 5198 of the Revised Statutes of the United States, under which said causes of action are brought.

Second. That each and every of the said causes of action stated in said alleged amended petition are new and different causes of action and are not the identical causes of action stated in said original paper-writing alleged to be a petition and filed herein on March 19, 1887.

Third. That the first, seventh, eighth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, nineteenth, twentieth, twenty-third, twenty-fourth, and twenty-fifth causes of action set forth in plaintiff's amended petition did not accrue to the plaintiff herein alone, but to him and one Neil Bollong, who is still living.

Fourth. That the second, third, fourth, fifth, sixth, ninth, tenth, and eleventh cause- of action set forth in the plaintiff's amended pe-

tition did not accrue to the plaintiff herein alone, but to him and one Thomas L. Palmer, who is still living.

Fifth. That the twenty-ninth cause of action set forth in
39 the plaintiff's amended petition did not accrue to the plaintiff herein alone, but to him and one Neil R. Bollong, who is still living.

Sixth. That the thirtieth cause of action set forth in plaintiff's amended petition did — accrue to the plaintiff herein alone, but to him and Thomas L. Palmer and Neil R. Bollong, who are still living.

Seventh. That it denies each and every allegation in said amended petition contained.

(Signed) E. T. HODSDON,
Attorney for the Defendant.

THE STATE OF NEBRASKA, } ss:
Colfax County, }

I, E. T. Hodsdon, being first duly sworn, on oath depose and say that I am the duly authorized attorney for the defendant in the above-entitled action, and that the reason this verification is made by the defendant's attorney is that the said defendant is a corporation, and that the facts stated in the foregoing answer are true, as I verily believe.

(Signed) E. T. HODSDON.

Subscribed in my presence and sworn to before me this 24th day of August, A. D. 1889.

(Signed) F. C. REINECKE,
Clerk D. C. [SEAL.]

And afterwards, to wit, on the 4th day of February, A. D. 1889, the plaintiff filed his reply in the words and figures following, to wit:

In the District Court of Colfax County, Nebraska.

HECTOR C. BOLLONG
vs.
THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA.

40 Now comes the plaintiff and for reply to the defendant's amended answer herein denies each and every allegation of new matter in said answer contained.

(Signed) C. J. PHELPS AND J. A. GRIMISON,
Pl'ff's Att'ys.

THE STATE OF NEBRASKA, } ss:
Colfax County, }

J. A. Grimison, being duly sworn, says he is one of the attorneys in the above-entitled action, duly authorized in the premises; that said plaintiff is now a non-resident of the said county and State and

is absent therefrom; that the facts stated in the foregoing reply are true, as he verily believes.

(Signed) J. A. GRIMISON.

Subscribed in my presence and sworn to before me Sept. 4th, 1889.

[SEAL.] (Signed) F. C. REINECKE,
Clerk Dist. Court.

And now, on this 18th day of October, A. D. 1889, it being the 4th day of the regular October, 1889, term of said court, this cause coming on for hearing on the pleadings and the evidence and a jury being waived was submitted to the court and the trial proceeded, and the hour of adjournment having arrived the court adjourned until to-morrow morning, October 19th, 1889, at nine o'clock.

And now, on this 19th day of October, A. D. 1889, it being the fifth day of the regular October, A. D. 1889, term of said court, this cause coming on for further hearing and the court having heard all the evidence adduced and the argument of the counsel takes the same under advisement.

And afterwards, on the 16th day of November, 1889, the defendant filed its request for findings in the words and figures, to wit:

41 In the District Court of Colfax County, Nebraska.

HECTOR C. BOLLONG, Plaintiff,
vs.
THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, Defendant.

Request for Findings.

The defendant requests the court to find the following conclusions of fact and the following conclusions of law in the above-entitled action, the same being stated separately:

Conclusions of Fact.

First. That the alleged amended petition herein was filed on January 11th, 1889, and the same sets up new and different causes of action.

Second. That upon the seventh and ninth causes of action set out in said alleged amended petition the court finds for the defendant, because the payments of interest therein claimed to have been made were made more than two years prior to the commencement of this action, and that the same were not made by this plaintiff.

Third. That upon the fifth, sixteenth, twenty-fifth, twenty-eighth, and thirty-first causes of action the court finds for the defendant, because the several amounts alleged therein to have been paid as interest were not paid in pursuance of any previous agreement or

contract so to do or for the forbearance of a debt or sum of money due.

Fourth. That upon the seventeenth, eighteenth, twenty-first, twenty-second, and twenty-sixth causes of action the court finds for the defendant, because the several amounts alleged therein
42 to have been paid as interest on the respective sums therein named were paid to Sumner Brothers and not the defendant bank, and were not paid in pursuance of any contract or agreement with the defendant bank.

Fifth. That upon the ninth cause of action the court finds for the defendant, because the payment of interest therein alleged to have been made was made by Bollong and Company and not by this plaintiff, and the contract for the payment of the interest therein named was made with Bollong and Company and not with this plaintiff, and that upon the seventh cause of action the interest therein alleged to have been paid was paid by Neil Bollong and the contract therefor made with said Neil Bollong and not this plaintiff.

Conclusions of Law.

First. That the statute of limitations run until the filing of the alleged amended petition herein, and the several causes of action set out in said alleged amended petition were not commenced until the filing of the alleged amended petition and the appearance of the defendant to defend ad to said claims, and are each and every one of them barred by the statute of limitations.

Second. That — the seventh and ninth causes of action the court finds that the same were barred by the statute of limitations at the time of the commencement of this action, said payments of interest being more than two years prior to the commencement of this action.

Third. That upon the fifth, sixteenth, twenty-fifth, twenty-eighth, and thirty-first causes of action the court finds that
43 the same were not usurious, because the said several sums of money therein alleged to have been paid as interest were not paid in pursuance of any previous agreement or contract so to do or for the forbearance of a debt or sum of money due.

Fourth. That upon the seventeenth, eighteenth, twenty-first, twenty-second, twenty-sixth causes of action the court finds that said transactions constitute no breach of the statute under which said causes of action were brought, to wit, section 5198 of the Revised Statutes of the United States, the said sums of money therein alleged to have been paid as interest having been paid to Sumner Brothers and not to the defendant bank, and were not paid in pursuance of any contract or agreement with the defendant bank.

Fifth. That the allegations of the said alleged amended petition are not sustained by sufficient evidence.

Sixth. That upon the ninth cause of action the court finds that the same accrued to Bollong and Company and not to this plaintiff,

and that upon the seventh cause of action that the same accrued to Neil Bollong and not to this plaintiff.

(Signed) E. T. HODSDON,
Att'y for Defendant.

And now, on this sixteenth day of November, A. D. 1889, it being the day to which the regular October, A. D. 1889, term of said court was adjourned, this cause coming on for final hearing and the court having heretofore taken the same under advisement and being fully advised in the premises finds as follows, to wit:

First. Upon the first cause of action for the plaintiff, $93.

Second. Upon the second cause of action for the plaintiff, $93.

44 Third. Upon the third cause of action for the plaintiff, $139.50.

Fourth. Upon the fourth cause of action for the plaintiff, $139.50.

(Fifth cause of action withdrawn.)

Sixth. Upon the sixth cause of action for the plaintiff, $99.00.

Seventh. Upon the seventh cause of action for the plaintiff, $161.20.

Eighth. Upon the eighth cause of action for the plaintiff, $57.20.

Ninth. Upon the ninth cause of action for the plaintiff, $93.00.

Tenth. Upon the tenth cause of action for the plaintiff, $93.

Eleventh. Upon the eleventh cause of action for the plaintiff, $62.00.

Twelfth. Upon the twelfth cause of action for the plaintiff, $13.20.

Thirteenth. Upon the thirteenth cause of action for the plaintiff, $37.20.

Fourteenth. Upon the fourteenth cause of action for the plaintiff, $13.20.

Fifteenth. Upon the fifteenth cause of action for the plaintiff, $37.20.

Sixteenth. Upon the sixteenth cause of action for the plaintiff, $55.26.

Nineteenth. Upon the nineteenth cause of action for the plaintiff, $21.00.

Twentieth. Upon the twentieth cause of action for the plaintiff, $63.00.

Twenty-third. Upon the twenty-third cause of action for the plaintiff, $93.00.

Twenty-fourth. Upon the twenty-fourth cause of action for the plaintiff, $62.00.

45 Twenty-fifth. Upon the twenty-fifth cause of action for the plaintiff, $48.00.

Twenty-seventh. Upon the twenty-seventh cause of action for the plaintiff, $3.00.

Twenty-eighth. Upon the twenty-eighth cause of action for the plaintiff, $4.80.

Twenty-ninth. Upon the twenty-ninth cause of action for the plaintiff, $21.00.

Thirtieth. Upon the thirtieth cause of action for the plaintiff, $89.58.

Thirty-first. Upon the thirty-first cause of action for the plaintiff, $10.00.

The court finds for the plaintiff in all the sum of $1,601.84.

The same being double the amount of usurious interest paid by the plaintiff to the defendant and by the defendant taken and received upon usurious loans made by the defendant to the plaintiff, as alleged in the above-mentioned causes of action.

The court further finds for the defendant upon the seventeen-, eighteenth, twenty-first, twenty-second, and twenty-sixth causes of action.

(Signed) WILLIAM MARSHALL, *Judge.*

As to the request made on the part of the defendant as to questions of fact and conclusions of law the court finds as to questions of fact as follows:

1st. As to the first request, that the amended petition was filed Jan. 11th, 1889, but that the same does not set up new causes of action; it only separately states and numbers the causes of
46 action set up in the first or original petition except the 5th cause of action, which was by the plaintiff withdrawn.

2d. That the payments of interest set upon the 7th and 9th causes of action were made at the time of the final payment of the sums borrowed on which such judgments of interest were made.

3d. That the payments of interest upon the 5th, 16th, 25th, and 28th causes of action *and 28th causes of action* were paid under and in pursuance of the extended original agreement to pay such interest.

4th. That upon the 17th, 18th, 21st, 22nd, and 26th causes of action the loans therein set out were made by Sumner Bros. and not by the defendant bank.

5th. That upon the 9th cause of action the loan therein set out was made by the defendant to the plaintiff and not to Bollong & Co.

As to the conclusions of law the court finds as follows:

First. That this action, including all the causes of action embraced in the plaintiff's petition (except the 5th), are to be regarded as commenced at the date of the summons served upon the defendant.

2d. That the 7th and 9th causes of action were not barred by the two-years statute of limitations applicable to this class of actions.

3d. That the interest paid upon the 5th, 16th, 25th, & 28th causes of action were paid upon the clearly implied extension of the
47 original agreement to pay such interest.

4th. That the interest paid upon the 17th, 18th, 21st, 22nd, & 26th causes of action being paid to Sumner Bros. for a loan of their money, the defendant is not liable therefor.

5th. That the allegations of the amended petition, except as to the 5th, 17th, 18th, 21st, 22nd, & 26th causes of action, are sustained by sufficient evidence.

(Signed) WILLIAM MARSHALL.

And afterwards, on the same day, the defendant filed its exceptions to the findings of the court in the words and figures following, to wit:

In the District Court of Colfax County, Nebraska.

HECTOR C. BOLLONG, Plaintiff,
vs.
THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, Defendant.

The defendant excepts to the findings of the court in the above-entitled action for the following reasons:

First. Because the court finds that the plaintiff is entitled to recover upon the first, second, third, fourth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, nineteenth, twentieth, twenty-third, twenty-fourth, twenty-fifth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, and thirty-first causes of action twice the full amount alleged in
48 each of said causes of action to have been paid as interest by the plaintiff to the said defendant, whereas he is only entitled to recover, if at all, double the excess of the legal interest paid within two years of the commencement of this action.

Second. Because the court finds that the plaintiff is entitled to recover under the seventh cause of the action the sum of $161.20, whereas the said cause of action was at the time of the commencement of this action fully barred by the statue under which the same was brought, and that said cause of action did not accrue to this plaintiff alone, but to him and one Neil Bollong, who is still living.

Third. Because the court finds that the plaintiff is entitled to recover under the sixteenth, twenty-fifth, twenty-eighth, thirty-first causes of action the sums so found by said court, whereas the plaintiff is not entitled to recover, since said sums alleged to have been paid as interest in each of said causes of action were not paid in pursuance of any agreement so to do, nor were the said sums so alleged to have been paid or taken so paid for the forbearance of a debt or sum of money due.

Fourth. Because the court finds for the plaintiff in the sum of $1,601.81, whereas he is only entitled, if at all, to a finding for $—.

Fifth. Because the court finds that the said amended petition does not state new and different causes of action, whereas each and every cause of action therein stated are new and different causes of action.

Sixth. Because the court finds that the payments of interest on the seventh and ninth causes of action were made at the
49 final payment of the sums borrowed, whereas the same was fully paid as interest on the 5th day of May, 1884, and on the 26th day of May, A. D. 1884, respectively, more than two years prior to the commencement of this action, and for the further reason that

neither of said causes of action accrued to this plaintiff, but to other and different persons, to wit, the seventh to Neil Bollong and the ninth to Bollong and Co.

Seventh. Because the court finds that this action, including all the causes of action embraced in the amended petition, are to be regarded as commenced at the date of the issuance of summons which was served upon the defendant, whereas they should be regarded as commenced at the time of the filing of the alleged amended petition herein and the appearance of the defendant thereto, to wit, on January 11th, 1889, since the alleged original petition filed has been held to have stated no cause of action, and that the statute of limitations run until the filing of the alleged amended petition and the appearance of the defendant thereto, on January 9, 1889, and that each and every cause of action therein was at said time fully barred.

Eighth. Because the court finds that the seventh and ninth causes of action were not barred by the statutes of limitations, whereas the same were fully barred at said time.

Ninth. Because the court finds that the sums paid as interest on the sixteenth, twenty-first, twenty-eighth, and thirty-first causes of action were paid upon the clearly implied extension of the original agreement to pay such interest, whereas such payments were purely voluntary, nor was any extension made for said time
50 even by implication.

Tenth. Because the court finds that the allegations of the said alleged amended petition are sustained by sufficient evidence, whereas the same are not sustained by sufficient evidence.

Eleventh. Because the court finds said action, including the causes of action embraced in the plaintiff's petition (excepting 5th), are to be regarded as commenced at the date of the summons served upon the defendant, whereas said action, including the causes of action embraced in the said alleged amended petition herein, are to be regarded as commenced at the time of filing of the amended petition herein and appearance thereto by the defendant, since the said alleged original petition was duly adjudged to state no cause of action, and that the said alleged amended petition states new and different causes of actions than the said original petition filed herein.

Twelfth. That court erred in finding for the plaintiff on the first, seventh, eighth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, nineteenth, twentieth, twenty-third, twenty-fourth, and twenty-fifth causes of action set forth in said amended petition, because the same did not accrue to this plaintiff alone, but to him and one Neil Bollong, now living.

Thirteenth. Because the court finds for the plaintiff on the second, third, fourth, fifth, sixth, ninth, tenth, and eleventh causes of action set forth in the plaintiff's alleged amended petition, whereas said causes of action did not accrue to this plaintiff alone, but to him and one Thomas L. Palmer, who is still living.

51 Fourteenth. Because the court finds for the plaintiff on the twenty-ninth cause of action set forth in the plaintiff'-

amended petition, whereas said cause of action did not accrue to this plaintiff, but to him and one Neil R. Bollong, who is still living.

Fifteenth. Because the court finds for the plaintiff under the thirteenth cause of action set forth in said alleged amended petition, whereas said cause of action did not accrue to this plaintiff alone, but to him and Thomas L. Palmer and Neil Bollong, who are still living, and that said interest was not paid to this defendant, but to one William Wallace.

(Signed) THE SCHUYLER NATIONAL BANK
OF SCHUYLER, NEBRASKA,
By E. T. HODSDON, *Its Attorney.*

And afterwards, on the same day, to wit, November 16, A. D. 1889, this cause came on to be heard on the defendant's exception to the findings of the court, on consideration whereof the court doth overrule the same; to which ruling of the court the defendant excepts.

And afterwards, on the same day, to wit, November 16, A. D. 1889, the defendant filed a motion for a new trial in the words and figures following, to wit:

In the District Court of Colfax County, Nebraska.

HECTOR C. BOLLONG, Plaintiff,
vs.
THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, Defendant. } Motion for a New Trial.

The defendant moves the court for a new trial of this cause for the following reasons:

52 1st. Because the court erred in overruling the defendant's motion to strike from the petition of the plaintiff the irrelevant, redundant, and scandalous matter therein contained.

2nd. That the court erred in overruling the defendant's motion to dismiss for want of jurisdiction to try and determine the subject-matter of said action.

3rd. That the court erred in overruling the defendant's motion to strike the plaintiff's alleged amended petition from the files of the court, for that the court had no authority to allow the said alleged amendments, and that each and every cause of action stated in said alleged amended petition is a new and different cause of action than that stated in the alleged original petition filed herein; that the same were each and every one of them barred at the time of the commencement of this action and the filing of the said amended petition herein and the *at the* appearance thereto by the defendant.

4th. That there is error in the assessment of the amount of the recovery in this, to wit, that the court permitted the plaintiff to recover twice the full amount of interest found to have been paid by the plaintiff to this defendant, whereas he was only entitled to recover, if at all, twice the amount paid in excess of the legal rate of interest within two years of the commencement of this action.

5th. That the court erred in admitting any evidence to sustain the allegations of the amended petition for that the said petition state- facts sufficient to constitute a cause of action.

6th. That the court erred in admitting any evidence over
53 the objections of the defendant thereto under the several alleged causes of action in said amended petition, since each and every one — causes of action were, at the time of the filing of said alleged amended petitions and the entry of appearance thereto by the defendant, and at the commencement of the action the said original paper-writing filed herein entirely failing to state any cause of action whatever, barred by the statute under which they were brought, to wit, section 5198 of the Revised Statutes of the United States.

7th. That the court erred in permitting the plaintiff to recover under the seventh cause of action in said alleged amended petition stated, since the same was barred before the commencement of this action by the statute under — said action was brought, to wit, sections 5197 and 5198 of the Revised Statutes of the United States, and the same did not accrue to this plaintiff alone, but to him and one Neil Bollong, now living.

8th. That the court erred in permitting the plaintiff to recover under the first, seventh, eighth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, nineteenth, twentieth, twenty-third, twenty-fourth, and twenty-fifth causes of action set forth in said amended petition because the same did not accrue to this plaintiff alone, but to him and one Neil Bollong, now living.

9th. That the court erred in permitting the plaintiff to recover under the second, third, fourth, fifth, sixth, ninth, tenth, and eleventh causes of action set forth in the plaintiff's alleged amended petition because said causes of action did — accrue to this plaintiff alone, but to him and one Thomas L. Palmer, now living.

Tenth. That the court erred in permitting the plaintiff to
54 recover under the twenty-ninth cause of action set forth in the plaintiff's amended petition because said cause of action did not accure to this plaintiff alone, but to him and one Neil R. Bollong, who is still living.

Eleventh. That the court erred in permitting the plaintiff to recover under the thirtieth cause of action set forth in said alleged amended petition because said cause of action did not accrue to this plaintiff alone, but to him and Thomas L. Palmer and Neil Bollong, who are still living.

12th. That the court erred in permitting the plaintiff to recover under the sixteenth, twenty-fifth, twenty-eighth, and thirty-first causes of action in said alleged amended petition stated because the said sums therein alleged to have been paid as interest on the loans therein mentioned were not paid in pursuance of any previous agreement so to do, nor were the same paid or taken for the forbearance of a debt or sum of money due.

13th. That the court erred in permitting the plaintiff to recover herein the sum of $1,601.84 because the law and the evidence does not warrant a recovery in so large an amount.

14th. That the court erred in refusing to find the first, second, third, and fifth requests for conclusions of facts in said defendant's request for such findings as therein asked for, and in making the findings herein made in pursuance of such requests.

15th. That the court erred in refusing to find first, second, and third and fifth and sixth conclusions of law requested by the defendant, as set forth in the said requests, and in finding the conclusions of law set forth in first, second, third, and fifth con-
55 clusions of law filed herein by said court.

16th. Errors of law occurring at the trial and duly excepted to.

17th. That the findings and decision of the court herein are not sustained by sufficient evidence, and are against the clear weight thereof.

18th. That the findings and decision of the court herein are contrary to law.

Nineteenth. That the court erred in finding that the allegations of the said amended petition are sustained by sufficient evidence.

(Signed) E. T. HODSDON,
Att'y for the Defendant.

And afterwards, to wit, on the 16th day of November, A. D. 1889, this cause came on for hearing on the motion for a new trial, and was submitted to the court, on consideration whereof the court doth overrule the same; to which ruling of the court the defendant excepted. It is therefore considered by the court that the said Hector C. Bollong recover from the said defendant, The Schuyler National Bank of Schuyler, Nebraska, the sum of one thousand six hundred and one dollars and eighty-four cents ($1,601.84) and his costs herein expended.

(Endorsed:) No. 4026. Schuyler Nat'l Bank *v.* Hector C. Bollong. Transcript. Supreme court of Nebraska. Filed Dec. 17, 1889. Walter A. Leese, clerk.

56 *Index.*

Plaintiff's testimony.	(Page.) Direct.	Cross.	Redirect.	Recross.
Witnesses:				
H. C. Bollong	1	24	48	50
H. C. Bollong (recalled)	52			
Defendant's testimony.				
C. E. Sumner	53	54		
William H. Sumner	55	63	69	70
H. C. Bollong (recalled)	70			
Admission	71			
Rebuttal.				
Bollong (recalled)	71	72	73	74

Exhibits 1 and 2 attached to mortgage.
Ex. No. 5.
Description of—

Exhibit	No.	1,	p. 13.
"	"	2,	" 14.
"	"	3,	" 15.
"	"	4,	" 16.
"	"	5,	" 17.
"	"	6,	" 19.
"	"	7,	" 53.
"	"	8 & 9,	" 58.
"	"	10,	" 61.
"	"	11,	" 62.
"	"	12,	" 62.
"	"	13,	" 62.
"	"	14,	" 63.
"	"	15,	" 64.
"	"	16,	" 68.
"	"	17,	" 69.
"	"	18,	" 70.
"	"	19,	" 70.

57 In the District Court of Colfax County, Nebraska.

H. C. BOLLONG
vs.
SCHUYLER NATIONAL BANK.

Bill of Exceptions.

Be it remembered that on the trial of this cause in the district court of Colfax county, before William Marshall, judge of said court, at the October, 1889, term thereof, to wit, October 18th and 19th, 1889, the following evidence and testimony was introduced and given to the court by the plaintiff and in his behalf and by the defendant and in its behalf, together with the objections of the said parties to the introduction thereof, the rulings of the court thereon, and the exceptions of the said parties thereto, by them respectively noted, as hereinafter set forth.

Present: The said plaintiff in person, with his attorneys, Phelps & Sabin and J. A. Grimison, and also the defendant, by its attorney, E. T. Hodson.

H. C. BOLLONG, plaintiff, sworn, testified as follows:

(PHELPS:)

Mr. Bollong, are you the plaintiff in this suit?
A. Yes.
Do you know the Schuyler National bank?
A. Yes, sir.
Do you know where they are doing business?
A. Yes, sir.

Do you know whether they make statements, which statements you have seen, showing that they are an incorporated bank?

58 Defendant objects—incompetent, immaterial, irrelevant, not the best evidence. Overruled. Defendant excepts.

Defendant objects to the introduction of any evidence under this petition on the ground that it does not state grounds sufficient to constitute a cause of action.

(COURT:) General objection overruled.

Defendant excepts.

Answer that question.

A. Yes, sir; I have.

Have you done business with them as a national bank?

A. Yes, sir.

Do you know they are doing business as a national bank?

Defendant objects—incompetent, immaterial, not the best evidence. Overruled. Exception.

A. Yes, sir.

Do you know of their representing themselves as doing business as a national bank?

A. Yes, sir.

Defendant objects—not the best evidence.

Now, Mr. Bollong, calling your attention to your 7th cause of action, where you set out a transaction as occurring on the 5th day of May, 1884, with reference to the borrowing of $2,600, you may state what transaction, if any, you had with the defendant on that day?

A. Why, on the 5th day of May, 1884, I borrowed $2,600.

Defendant objects to the admission of any evidence under the 7th cause of action in this alleged amended petition, and, for ground of objection, say-, first, that this 7th cause of action is barred by the statute of limitations. Overruled. Exception.

And on the further ground that it does not state facts sufficient to constitute a cause of action. Overruled.

Ans. On the 5th day of May, 1884, I borrowed $2,600 from the Schuyler National bank, and they reserved $80.60 for 90 days' interest in advance.

You say they reserved out?

A. Yes, sir.

59 Who did they have that transaction with?

A. It was either the president or cashier. I think that was Mr. Charley Sumner.

Why did they reserve out $80.60?

Defendant objects on the ground that it assumes a statement of facts not yet proved and calling for the conclusion of the witness. Overruled. Exception.

A. That is what they charged me, $80.60; that is what they reserved.

What was that charged for?

A. For interest for 90 days on the $2,600.

Now, when, if ever, did you have any further to do with the Schuyler National bank with reference to this loan of $2,600?

Defendant objects—incompetent, immaterial, irrelevant, and the transaction is barred by the statute of limitations. Overruled. Exception.

A. August 6th, the same year, the note was renewed and November 7th and then February 7th.

Defendant objects to any evidence as to the transaction of August 6th, 1884, on the ground that it is barred by the statute, incompetent, immaterial. Overruled. Exception.

A. $80.60, and $100.75 November 7th.

Now, what, if anything, was done with reference to that indebtedness of $2,600 on or about the 19th day of June, 1885, with reference to this $80.60 which was reserved out of the $2,600 note? When did you pay finally the last of the renewals of that note for $2,600? What, if any, portion of that indebtedness of $2,600 did you pay on the 19th of June, 1885?

Defendant objects—incompetent, immaterial, and calling for the conclusion of the witness and leading, and barred by the
60 statute under which the action is brought. Overruled. Exception.

A. On or about the 19th of June, 1885, I paid $1,100 on this $2,600, and renewed the balance, $1,500, for 90 days and paid $46.50 interest.

That $46.50 of interest, what was that paid for?

A. For interest.

For what length of time?

A. For 90 days on the $1,500, the balance of the $2,600.

For 90 days in advance?

A. For 90 days in advance.

At what rate of interest?

A. At one per cent. a month, 12 a year.

Now, when did you pay any more principal or any portion of that last renewal note for $1,500 made on June 19, 1885?

Defendant objects—calling for a conclusion from the witness, and that it is incompetent, immaterial, irrelevant. Overruled. Exception.

A. The same day I paid $28.60 overdue interest on this same note, on the $2,600, at the rate of 12 % per annum.

Why did you pay that?

Defendant objects—incompetent, immaterial, irrelevant. Overruled.

A. Why that is what they charged me, and I paid it.

Those amounts that you paid, who did you pay them to?

A. The cashier or president of the Schuyler National bank, in Schuyler, Nebraska.

Now, when next, if at all, did you have anything to do with the bank with reference to the $1,500 note made and executed and delivered by you to the defendant on the 19th day of June, 1885?

Defendant objects—incompetent, immaterial, and the cause of action is barred by the statute of limitations. Overruled.
61 Exception.

A. About September 18, 1885, I renewed the $1,500 note for 90 days and paid $46.50 interest.

Interest upon what sum?

A. $1,500.

For what length of time?

A. 90 days.

At what rate of interest?

A. At 12 % per annum.

Why did you pay that $46.50?

Defendant objects—incompetent, immaterial, irrelevant. Overruled. Exception.

A. That is what they charged me and I paid it.

State what, if any, transaction you had with the defendant on the 21st day of December, 1885, relative to this debt of $1,500.

To the admission of any evidence under this transaction defendant objects—incompetent, immaterial, barred by the statute of limitations, and the further objection that this defendant has no right to sue to recover therefor. Overruled.

A. December 21st, 1885, I renewed the same $1,500 for 90 days and paid $69.75 interest in advance.

Interest for what?

A. For the $1,500.

For what length of time?

A. 90 days.

At what rate of interest was this?

A. One and one-half per cent; 18 % per annum.

State what transaction, if any, you had with the defendant on or about the 26th day of April, 1886, with reference to this debt of $1,500.

Defendant objects—immaterial, irrelevant, incompetent, barred by the statute of limitations. Overruled. Exception.

A. About the 26th of April, 1886, I renewed this $1,500 note for 90 days and paid $69.75 interest in advance on the $1,500.
62 At what rate of interest was this?

A. It was 18 % per annum.

Who was this transaction had with?

A. With the cashier or president—the cashier.

Why did you pay that $69.75?

Defendant objects—incompetent, immaterial, irrelevant. Overruled. Exception.

A. That is what they charged me and I paid it.

What other payments of interest, if any, was made on that 26th day of April, 1886, on this debt?

Defendant objects—immaterial, irrelevant, incompetent, barred by the statute under which it is brought; further objection that the 5th cause of action in the petition does not state facts sufficient to constitute a cause of action. Overruled. Exception.

A. Well, I can't say whether it was on that day that that interest was paid or not on that overdue.

Well, what was done, whenever it did occur, about it?

A. There would be just about 30 days at one and one-half per cent., the same as the other.

What did you do about it?

A. The reason that wasn't in——

Do you remember the transaction with reference to past-due interest?

Defendant objects—leading. Overruled. Exception.

A. There is 30 days; the reason it was not in there is a 30-day note was lost somewhere that I did not have between the two payments.

What rate of interest did you pay?

A. It was the same rate; at the rate of 18 % per annum.

Why did you pay 18 % per annum during that 30 days?

Defendant objects—incompetent, immaterial, irrelevant. Overruled. Exception.

63 A. That is what they charged me at the time.

What transaction, if any, did you have with the defendant on or about the 4th day of October, 1886, with reference to this $1,500 debt?

A. On the 4th day of October I had a settlement.

What year?

A. 1886. I had a settlement with the bank on that day.

Defendant makes same objection as last above and barred by the statute. Overruled. Exception.

On the 4th day of October, 1886, I had a settlement with the bank, and this note, with several others, were all figured up on that day, and I owed the bank $3,853.53, and I paid $2,463.32, and there was a balance found of $1,390.21, which I gave a note for $1,435.

On that 4th day of October was this note for $1,500 past due?

A. Yes, sir.

What interest, if any, did you pay on that day as past-due interest?

Defendant objects—incompetent, immaterial, irrelevant, barred by the statute of limitations. Overruled. Exception.

A. $49.50 was paid on this $1,500 on the 4th day of October, before it was figured into this settlement on that date.

What was that paid for?

A. For interest.

For what length of time?

A. For about 48 or 49 days.

Why did you pay it?

Defendant objects—incompetent, immaterial, irrelevant. Overruled. Exception.

A. Because they charged me that much.

With whom did you have this deal?

A. Mr. Charley Sumner.

Who was he?

A. President of the Schuyler National bank at that time.

64 Now, on that day what was done, if anything, with reference to paying the balance due upon this original first lending of $2,600?

Defendant objects—incompetent, immaterial, irrelevant, and the cause of action stated is barred, and, furthermore, it calls for the conclusion of the witness. Overruled. Exception.

A. There would not be quite. It would be about a month and a third of a month on that other note.

Attend to this question now. (Question repeated.)

A. On the 4th day of October I paid $2,463.32, and there was a balance of $1,390.21.

Now, this $1,500 note, what, if anything, did you do on that day, that 4th day of October, 1886, with reference to paying that, or was that included in payment of the $2,400 you say you paid that day?

A. That was included.

In that payment?

A. I said before we had a settlement, and there was several notes all figured up at that one time. I paid a certain amount of the whole indebtedness, and there was a balance of $1,390, and I gave a note for $1,435.

In that settlement was this note of $1,500 included?

A. Yes; the same day there was $49.50 interest.

Defendant objects—incompetent, immaterial, and the transaction is barred. Overruled.

Pay for what?

A. For overdue interest.

Overdue interest on what amount?

A. On the $1,500.

For what length of time?

A. If you just wait one minute I will give you the correct time.

Defendant objects to witness making computations. Overruled.

65 A. That note was given on the 12th day of April, and it ran 90 days; that would make it the 28th of July; then from the 28th of July to the 4th of October, that is the number of days I was trying to get; that would be about two months and one-third, or two months and seven days.

That is what you paid that interest for?

A. Yes, sir; $49.50.

Why did you pay it?

A. That is what they charged.

Defendant objects—incompetent, immaterial, irrelevant. Overruled. Exception.

Who paid to?

A. Charley Sumner.

Who is he?

A. President of the bank.

What bank?

A. Schuyler National bank.

What was the amount of notes given on the 4th day of October, that balance?

A. $1,435.

What length of time was that given for?

A. 90 days.

Was there any payment by you of interest in advance?

A. No, sir.

When, if ever, did you finally pay the balance of that note?

Defendant objects—incompetent, immaterial, irrelevant. Overruled. Exception.

A. January 21, 1887.

Did you pay it in full on that day?

Defendant objects—leading.

A. Yes, sir.

Objection here sustained.

What amount did you pay on that day in January, 1887?

A. $1,005. I paid $435 on the 5th day of January, 1887; that left $1,000, and they charged me $5.

Charged you $5 for what?

66 Defendant objects—immaterial, irrelevant, incompetent, and barred by the statute. Overruled. Exception.

A. Charged me $5 for interest on $1,000 in advance.

At what rate of interest was that?

A. 12% *per cent.* per annum.

Why did you pay that?

Defendant objects—incompetent, immaterial. Overruled. Exception.

A. That is what they charged me.

Who did you pay it to?
A. Will. Sumner.
Who is Will. Sumner?
A. Cashier of the bank.
Now, referring to the 9th cause of action, I will ask you what transaction, if any, you had with the defendant on or about the 26th day of May, 1884?

To the admission of any evidence under that cause of action defendant objects on the ground that the cause of action is barred by the statute of limitations, incompetent, immaterial. Overruled.

A. I borrowed $1,500 on the 26th day of May, 1884, and they reserved $76.50 for 90 days interest in advance.
What did you execute and deliver that day, if anything?
A. I gave them a note.
Whose note?
A. My note.
Those several notes that you gave, whose were they all?
A. Well, they were mine; I generally had a signer on them.
Well, this debt?
A. My own note; my own signature to the note.
Now what amount did you say they reserved?
A. $76.50.
How did they reserve that?
A. I gave my note for $1,500 and they gave me credit for $1,423.50.

Gave you credit, what do you mean, on their books as a
67 depositor?

A. Yes, sir.
What was the $76.50 reserved for?
A. For interest.
For interest on what sum?
A. $1,500.
For what length of time?
A. 90 days.
Did you agree to that?

Defendant objects—leading.

A. Yes, sir.

Objection sustained.
Defendant moves that be stricken out.

(COURT:) Stricken out.

Why was that reserved?
A. I agreed to give it to them.
Why did you agree to give it?
A. That is what they charged me.
Who was this transaction with?
A. With the president or cashier of the bank; that was with the president, Mr. Charley Sumner, that transaction.

Now, what was done with reference to that note when it came due; did you pay it?

A. No, sir; it was renewed from time to time.

What transaction, if any, did you have with the defendant on or about the 29th day of May, 1885, with reference to this debt of $1,500?

Defendant objects to admission of any evidence under that cause of action as incompetent, immaterial, barred by the statute of limitations. Overruled. Exception.

A. I renewed it, the $1,500, about the 29th day of May.

What year?

A. 1885; for 90 days and paid $46.50 interest in advance.

Interest on what?

A. On $1,500.

For what length of time?

A. For 90 days.

Who did you pay it to?

68 A. The president or cashier of the Schuyler National bank.

Why did you pay it?

Defendant objects—incompetent, immaterial, irrelevant. Overruled. Exception.

A. That is what they charged me and I paid it.

What transaction, if any, did you have with the defendant on or about the 31st day of August, 1885?

A. I paid $500.

Defendant objects—incompetent, immaterial, barred by the statute. Overruled. Exception.

A. Paid $500 on the $1,500 and renewed the balance, $1,000.

Renewed it for what length of time?

A. Renewed it for 90 days and paid $31 interest in advance.

That $31 interest for what length of time in advance?

A. For 90 days.

Upon how much money?

A. $1,000.

What rate of interest was that?

A. 12% per annum.

Whose note did you give for that?

A. I gave my own note with a signer.

Is that true of all this series of notes?

Defendant objects—leading.

A. Yes, sir.

Who did you pay those to?

A. The cashier or president of the Schuyler National bank.

Why did you pay it?

Defendant objects—incompetent, immaterial, irrelevant. Overruled. Exception.

A. That is what they charged me and I paid it and agreed to pay it.

Whose were all those notes that you have testified that you from time — gave to the defendant, Schuyler National Bank?

69 A. They were my own.

What transaction, if any, did you have with the defendant with reference to this debt or note of $1,000 on about the 2nd day of December, 1885?

To the admission of any evidence on the 12th cause of action defendant objects—incompetent, immaterial, irrelevant, barred by the statute of limitations. Overruled. Exception.

A. I paid $600 about the 2nd day of December, 1885, on the $1,000.

Who did you pay it to?

A. The cashier or president of the Schuyler National bank.

What did you do with reference to the balance?

A. I renewed it, $400, 30 days.

What did you do in renewing?

A. I paid $6.60 interest for 30 days.

On how much money?

A. $400.

You say you renewed it. What do you mean by renewing it?

A. Why, I took up the old note and gave a new note.

Q. New note for how much?

A. $400.

And was it upon that that you paid the interest?

A. Yes, sir.

Defendant objects—leading.

For what length of time?

A. 30 days.

At what rate of interest was that?

A. That would be about one and one-half per cent. a month.

Why did you pay that rate of interest?

A. That is what they charged me, and I paid it.

You say you gave a new note; whose was it?

A. My own note.

What transaction, if any, did you have with the defendant on or about the 4th day of January, 1886, with reference to this note or debt of $400?

70 Defendant objects to the admission of any evidence under the 13th cause of action upon the ground that it is incompetent, immaterial; the cause of action is barred by the statute of limitations. Overruled. Exception.

A. I renewed it about the 4th day of January, 1886—renewed the $400 for 90 days.

What did you do in renewal?

A. Paid $18.60 interest.

Interest upon what?

A. On $400.
For what length of time?
A. 90 days.
What rate of interest was that?
A. One and one-half per cent.—18 per cent.
Who did you pay it to?
A. To the president or cashier of the Schuyler National bank.
Why did you pay it?
A. That is what they charged me.
When you say you renewed it what do you mean?
A. Took up the old note and gave a new one.
When you gave a new note whose note did you give?
A. My own note.
When you say you gave a note I wish you would say whose note. Now, what transaction, if any, did you have with the defendant on or about the 7th day of April, 1886, with reference to this debt or note for $400?

To the admission of any evidence under the 14th cause of action defendant objects on the ground incompetent, immaterial, the cause of action barred by the statute of limitations. Overruled. Exception.

A. I took up the old note and I gave my note for $400 for 30 days in renewal, and paid $6.60 interest in advance.
Interest in advance on what?
A. On $400.
For what length of time?
A. For 30 days.
71 What rate of interest was that?
A. 18%.
Who did you pay that to?
A. The president or cashier of the Schuyler National bank.
Why did you pay it?
A. That is what he charged me, and I paid it; we agreed.
What transaction, if any, did you have with the defendant on or about the 11th day of May, 1886, with reference to this note or debt of $400?

To the admission of any evidence under the 15th cause of action we object—incompetent, immaterial, barred by the statute. Overruled. Defendant excepts.

A. I renewed about May 10th; I renewed the $400 for 90 days and paid $18.60 interest; gave my note for 90 days.
In what amount?
A. $400.
What was that $18.60 for?
A. For interest in advance.
On what sum?
A. $400.
For what length of time?
A. 90 days.

Who did you pay it to?

A. President or cashier of the Schuyler National bank.

Why did you pay it?

A. That is what they charged me and I agreed to pay it.

What transaction, if any, did you have with the defendant on or about the 15th day of May, 1886, with reference to this note or debt of $400?

To the admission of any evidence under the 16th cause of action defendant objects—incompetent, immaterial, barred by the statute of limitations. Overruled. Exception.

A. About the 15th of May this $400 that was renewed was put into a note of $1,100. There was a $700 and this $400 and
72 a balance of $50 was all put into one note four or five days after the 15th of May.

One note for how much?

A. $1,150.

Whose note?

A. My note.

Who was it given to?

A. ——.

Defendant objects—calling for conclusion. Overruled. Exception.

Whose note was it?

A. My note. I gave it to the Schuyler National bank then.

How long was it to run?

A. 90 days.

What interest, if any, did you pay?

—. Well, I paid one and one-half per cent.—18 per cent.

In advance?

A. Yes, sir.

Who to?

A. To the cashier or president of the Schuyler National bank.

Why did you pay it?

Defendant objects—immaterial. Overruled. Exception.

A. They charged me, and I agreed to pay them that.

What transaction, if any, did you have with the defendant on or about the 4th day of October, 1886, with reference to this note or debt of $1,150?

Defendant objects—having been gone over before. Overruled.

A. On the 4th day of October there was about $48 or $49 overdue interest, and they charged $27.63.

Defendant objects—incompetent, immaterial, barred by the statute. Overruled. Exception.

What was that $27.63 charged for?

A. For interest on the $1,150.

For what length of time?

A. About 48 or 49 days.

73 What rate of interest?

A. One and one-half per cent., or 18% per annum.

Why did you pay that?

A. That is what they charged me.

To whom did you pay it?

A. The president at that time of the Schuyler National bank.

Who computed it?

A. Mr. Charley Sumner.

Who was that transaction had with?

A. Charley Sumner and Mr. Hodsdon.

Who was Charley Sumner?

A. He was president of the Schuyler National bank.

Who was Hodsdon?

A. He was their attorney.

On that day it was that you gave a note that you speak of some time ago that was finally paid?

Defendant objects—leading.

The balance due of this debt on this 4th day of October, 1886—the balance due on this note—what was done with that?

A. I gave a note for the balance and paid it out the 21st of January, 1887.

What other note was this included in, if any?

A. This was included in several notes that were figured up.

When you gave a new note what new note was included in?

A. The $1,435 note.

The one you testified to before?

A. Yes, sir.

When was that finally paid, if at all?

A. It was about the 21st of January, 1887.

In full?

A. Yes, sir.

Defendant objects—leading. Overruled.

Now, what transaction, if any, did you have with the defendant on or about the 8th day of December, 1885?

Defendant objects to the admission of any evidence under
74 that cause of action—incompetent, immaterial, barred by the statute of limitations. Overruled. Exception.

A. There is quite a few of these notes that were taken out that you put in evidence here, but on that day I borrowed $500.

Who did you borrow that $500 of?

A. The Schuyler National bank.

What interest, if any, did you pay thereon on that day?

A. $7.50 for 30 days' interest in advance; they reserved out.

You did not pay any interest that day, but there was $7.50 reserved?

A. Yes, sir.

What was that reserved for?

A. For 30 days' interest.
At what rate?
A. That would be one and one-half per cent.
Interest on the $500?
A. Yes, sir.
Did you give a note therefor?
A. Yes, sir.
I will ask you what is paper No. 1; is that the note?
A. That is the note.

(PHELPS:) I now offer that in evidence.

(No objection.)
The same marked Exhibit No. 1.

Now, what transaction, if any, did you have with the defendant on or about the 9th day of January, 1886?

To the admission of any evidence under the 18th cause of action defendant objects on the ground incompetent, immaterial, barred by the statute of limitations. Overruled. Exception.

A. About the 9th day of January, 1886, I renewed the $500 and borrowed $100 more, which made it six, or borrowed $100 and renewed the $500, which made it $600, for 90 days, and paid $27 interest.
$27 interest on what?
A. On $600 for 90 days.
Who did you pay it to?
A. To the cashier or president of the Schuyler National bank.
75 What did you pay it as and for?
A. As interest.
As interest on what?
A. $600.
For what length of time?

Defendant objects—incompetent, immaterial, irrelevant. Overruled. Exception.

A. I paid it because they charged me that much.
Is paper No. 2 the note you spoke of as having been given on that day?
A. Yes, sir.

(PHELPS:) We offer paper No. 2 in evidence.

(No objection.) The same marked Exhibit No. 2.)

Now, referring to the note you gave for $500, mentioned in the 17th cause of action and of date December 8th, 1885, what, if any, security therefor did you give?

Defendant objects—immaterial, irrelevant, and incompetent.

A. That chattel mortgage was for $1,000 loan; this here was just indorser.

(PHELPS:) We withdraw the question.

A. The mortgage did not belong to those notes.

What, if any, transaction did you have on or about the 12th day of April, 1886, with the defendant with reference to this note or debt of $600?

To the admission of any evidence under that cause of action defendant objects—incompetent, immaterial, the cause of action barred by the statute of limitations. Overruled. Exception.

A. About the 12th day of April I borrowed $100 and renewed the $600, which made it $700, for thirty days, and paid $10.50 interest in advance.

Interest upon what?

A. Upon the $700.

For what length of time?

A. 30 days.

Who did you pay it to?

76 A. The cashier or president of the Schuyler National bank.

What was it for?

A. For interest in advance.

Why did you pay it?

A. Paid it because they charged me that.

Defendant objects—incompetent, immaterial. Overruled. Exception.

Is paper No. 3 the note given by you?

A. Yes, sir; that is the note.

(PHELPS:) We offer paper No. 3 in evidence.

Defendant objects—immaterial, irrelevant, incompetent. Overruled. Exception.

A. They charged me that and I paid it.

What rate of interest was that?

A. About 18% per annum.

What transaction, if any, did you have with the defendant on or about the 15th day of May, 1886, with reference to this debt or note of $700.

To the admission of any evidence under the 20th cause of action defendant objects on the ground incompetent, immaterial, barred by the statute of limitations. Overruled. Exception.

A. I renewed this $700 for 90 days, but this $400 was put into this note, too, that I had paid the interest on 4 or 5 days previous.

Making in all how much?

A. And then a balance of $50, which made this note $1,150.

This is the same note for $1,150 referred to in your former testimony?

A. Yes, sir; the same note; settlement of October 4th.

On that day what, if anything, did you pay to the defendant, referring to the 15th of May?

A. On the 15th of May——
When this $700 note came due.
A. I paid $31.50.
For what?
A. For interest.
For what time?
A. For 90 days.
77 On what sum?
A. Well, $700, and three or four dollars on the $400.
At what rate of interest was that?
A. It was figured at one and one-half, I think.
Who did you pay it to?
A. The cashier or president of the Schuyler National bank.
Why did you pay it?

Defendant objects—incompetent, immaterial. Overruled. Exception.

A. Because they charged it. I agreed with them to pay it.
Now, Mr. Bollong, referring to the note described in the 17th cause of action, the note for $500, of date December 8, 1885, which was given for 30 days in advance, out of which you have testified the defendant deducted and reserved $7.50 as interest, I will ask you when that was finally paid.

Defendant objects—incompetent, immaterial, leading, calling for the conclusion of the witness. Overruled. Exception.

A. Well, it would be finally paid the 21st of January, 1887.
And that was included in this $1,150 note, was it?

Defendant objects—leading.

A. Yes, sir; included in this $1,150 note.

Objection overruled. Exception.

What transaction, if any, did you have with the defendant on or about the 7th day of November, 1885?
A. I borrowed $1,000.

To the admission of any evidence under the 21st cause of action defendant objects as incompetent, immaterial, irrelevant, barred by the statute of limitations. Overruled. Exception.

Who did you borrow it from?
A. From the Schuyler National bank.
What did you do with reference to it?
A. I borrowed $1,000.
78 What else did you do—what did you do?
A. I borrowed it and gave a note.
Gave whose note?
A. My note.
For how much?
A. For $1,000, and they reserved $46.50 for interest.
For interest for how long?

—. It was for 30 days, and it was one and one-half per cent., I think; it was $16 and something.

That was retained as what?

Defendant objects as leading and assuming a condition of things. Overruled. Exception.

For interest for what length of time?

A. 30 days in advance.

Who did you have this transaction with?

A. With the president or cashier of the Schuyler National bank.

Why did they retain $16.50, or whatever they did retain?

Defendant objects—incompetent, immaterial, irrelevant. Overruled. Exception.

A. They charged it, and I agreed to pay $16.50.

How much money did you get from them for that $1,000 note?

A. That would be $983.50.

Was paper No. 4 the note given at that time?

A. Yes, sir.

(PHELPS:) We offer paper No. 4 in evidence.

The same marked Exhibit No. 4. (No objection.)

At what rate of interest was that?

A. One and one-half per cent. a month; 18 % a year.

What other writing did you make on that day in that transaction with reference to this note?

A. I gave a chattel mortgage.

Is paper No. 5 that chattel mortgage?

A. Yes, sir; that is it.

Plaintiff offers Exhibit No. 5 in evidence. The same marked Exhidit No. 5. No objection.

79 At what rate of interest was that?

A. 18%.

Now, what was done with reference to that debt from time to time thereafter?

A. It was renewed from time to time.

What, if anything, was done with reference to this note or debt or the renewal of this note on or about the 4th day of October, 1886?

Defendant objects—calling for a conclusion. Overruled. Exception.

A. It went in with the settlement we had that day.

The settlement heretofore referred to by you?

A. Yes, sir.

And was included in that note for 1,400 odd dollars?

—. Yes.

And was finally paid?

A. January 21st, 1887. The balance of the settlement was paid January 21.

State whether, when it was paid, it was paid in full.

A. Paid in full; yes, sir.

State what, if anything, was done with reference to this debt or note for $1,000 on or about the 10th day of December, 1885.

To the admission of any evidence under the 22nd cause of action defendant objects—incompetent, immaterial, barred by the statute of limitations. Overruled. Exception.

A. I renewed the $1,000 note about the 10th of December for 90 days, and paid $46.50 interest in advance.

Interest in advance for what sum?

A. $1,000.

What length of time?

A. 90 days.

At what rate of interest?

A. 18 % per annum.

80 When you say you renewed it what do you mean?

A. I took up an old note and gave a new one.

When you gave a new note whose was it?

A. My own.

With whom did you have this transaction?

A. With the president or cashier of the Schuyler National bank.

Why did you pay this amount of interest?

A. Well, they charged me that much, and I agreed to pay it; contracted with them to pay it.

What transaction, if any, did you have with the defendant on or about the 13th day of March, 1886, with reference to this debt or note for $1,000?

To the admission of any evidence under the 23rd cause of action defendant objects—incompetent, immaterial, barred by the statute. Overruled. Exception.

A. About the 13th day of March, 1886, I renewed the $1,000 note for 90 days.

At what rate of interest was that?

A. 18 %.

When you say renewing a note what do you mean?

A. Took up the old note and gave a new one to the president or cashier of the Schuyler National bank.

Why did you pay this $46.50?

A. Because they charged me that much.

Defendant objects—incompetent, immaterial. Overruled. Exception.

What transaction, if any, did you have with the defendant on or about the 14th day of June, 1886, with reference to this note or debt for $1,000?

To the admission of any evidence under the 24th cause of action defendant objects—incompetent, immaterial, barred by the

81 statute. Overruled. Exception.

A. I renewed it for 60 days—the $1,000 note—and paid $31.50 interest in advance for the $1,000—60 days' interest.

Sixty days' interest on what?

A. On the $1,000.

For what length of time?

A. For sixty days.

At what rate of interest was that?

A. One and one-half—18 %.

Who did you pay that to?

A. The president or cashier of the Schuyler National bank.

Why did you pay it?

A. Paid it because they charged me that much.

When you renewed that note whose note did you give?

A. My note for $1,000.

What transaction, if any, did you have on or about the 4th day of October with reference to past-due interest on this debt, if anything?

To the admission of any evidence in regard to the 25th cause of action defendant objects—incompetent, immaterial, irrelevant, barred by the statute. Overruled.

A. Why, for the number of days that it was overdue they charged me $24—one and one-half per cent. interest.

How many days was that overdue?

A. It was about—that would be somewhere about 49 days, I think.

Well, now, you said they charged you $24 as interest; what did you do about it?

A. I paid it or agreed to pay it.

Who to?

A. Mr. Charley Sumner.

Who was Charley Sumner?

A. President of the Schuyler National bank.

Why did you pay it?

82 Defendant objects—incompetent, immaterial. Overruled. Exception.

A. Because he charged it; I contracted with him to pay it.

Upon what sum of money?

A. One thousand dollars.

What transaction, if any, did you have with the defendant on or about the 15th day of February, 1886?

To the admission of any evidence under the 26th cause of action defendant objects—incompetent, immaterial, irrelevant, barred by the statute. Overruled. Exception.

A. I borrowed $300 for 90 days and paid $13.50 interest.

You say you borrowed $300; what did you do?

A. They kept out $13.50.

What did you do?

A. Why, I gave a note for $300—90 days—my note to the Schuyler National bank.

What was this $13.50 retained out for?

A. For interest.

What length of time?

A. 90 days.

On what sum of money?

A. $300.

What rate of interest was that?

A. I think it was about one and one-half—18 %.

How much money did you get at the time you executed and delivered that note?

A. $13.50 less than $300—$96.50—$296.50—less the interest.

State what, if anything, was done with reference to that $300-note from time to time.

A. It was paid at the end of the 90 days; it was paid at maturity.

Paid in what sum?

A. $300.

When it became due?

A. Yes, sir.

It was, as a matter of fact, paid when due?

A. Yes, sir.

What is paper No. 6?

83 A. This note for $300. It is a note given to the Schuyler National bank.

Is that the note you have just testified concerning?

A. Yes, sir; it is.

(PHELPS:) We offer it in evidence.

The same marked Exhibit Six. (No objection.)

You said $296.50; do you want to correct that now?

A. $286.50.

Now, Mr. Bollong, state what transaction *state what transaction*, if any, you had with the defendant on or about the 14th day of July, 1886.

To the admission of any testimony under the 27th cause of action defendant objects—incompetent, immaterial, barred by the statute under which this action is brought. Overruled. Exception.

A. I borrowed $100 from the Schuyler National bank on the 14th day of July, 1886.

What did you do more than that?

A. I gave a note.

Whose note?

A. My note for $100; and they reserved $1.50 interest for 30 days in advance.

That $1.50 reserved as interest, what was that interest on?

A. $100.

What length of time?

A. 30 days.

At what rate of interest was that?

A. One and one-half per cent. or 18% per annum.
Who did you have that transaction with?
A. With the cashier or president of the Schuyler national bank.
How came you to permit this to be retained?

Objected to. Overruled.

A. That is what they charged me and I agreed to pay, and they took it.
How much money did you receive from them on that loan?

84 Defendant objects—immaterial, incompetent, irrelevant. Overruled. Exception.

A. $98.50.
What, if anything, was done with reference to that $100 indebtedness or note on about the 4th day of October, 1886?
A. It was figured in with a settlement we had on that day.
That settlement you have spoken of heretofore?
A. Yes, sir; on the 4th day of October.
What became of this amount?
A. There was $2.40.

Defendant objects to any evidence being given under this cause of action—incompetent, immaterial, irrelevant, barred by the statute. Overruled. Exception.

Go ahead.
A. It ran from August 14th or 10th until October 4th, and they charged $2.40 interest.
For what?
A. For overdue interest.
Upon what sum?
A. $100.
At what rate?
—. 1½% per month or 18% per year.
Did you pay it?
A. Yes, sir.
Why did you pay it?
A. Why, they charged me and I agreed to pay it, and they took that amount.
With whom was that done?
A. With Mr. Charley Sumner, president of the Schuyler National bank.
What became of the $100 indebtedness?
A. It was figured into a settlement we had that day.
The settlement you have heretofore spoken of?
A. Yes, sir.

Defendant objects—leading. Overruled. Exception.

A. And I paid a certain amount that day, and the balance was paid January 21, 1887.

85 And was this $100 included in the note that you have heretofore said you gave for $1,435?

A. $1,435. Yes, sir; part of this was included.

What transaction, if any, did you have with the defendant on or about the 11th of May, 1885?

To the admission of any evidence under the 29th cause of action defendant objects—incompetent, immaterial, barred by the statute. Overruled. Exception.

A. I borrowed $225 for 90 days.

What else did you do?

A. I gave my note for $225.

Due when?

A. Due in 90 days, or for 90 days; dated May 11th.

What, if anything, did you pay as interest?

A. $11.50 interest.

Interest on what?

A. On $225.

For what term?

A. For 90 days.

At what rate was that?

A. One and one-half per cent.; 18 % per annum.

Who did you pay that to?

A. The cashier or president of the Schuyler National bank.

Why did you pay it?

A. I paid it because they charged it and I agreed to pay it, and they took it.

Now, on this 4th day of October, 1886, at the settlement, when you say there was found due $1,390.31 after the payment you made that day, what contract or agreement, if any, was entered into by and between you, and what did you with reference to the balance due from you to them on that day?

Defendant objects, having been gone over; further, that the 30th cause of action set out in the petition, the facts alleged there, are not sufficient to constitute a cause of action, and incompetent, immaterial, and barred by the statute. Overruled. Exception.

86 A. I gave a note for $1,435. $44.79 of it was for interest.

Interest upon what sum?

A. $1,390.21.

For what length of time?

A. 90 days.

At what rate?

A. One and one-half, I think.

Why was that $44.79 included?

Defendant objects—incompetent, immaterial. Overruled. Exception.

A. For interest on the $1,390.21.

Why was it included?

A. Why, I paid $2,463.32 that day, and I didn't have money enough to pay the interest on it. That is why it was included.

Why did you consent to this $44.79 being included?

Defendant objects—incompetent, immaterial. Overruled. Exception.

A. They charged and I agreed to pay it, and they took it.

When you say that they charged these several, each and all of these items of interest that you speak of and have testified concerning, who do you mean by "them"?

A. I mean the officers in the Schuyler National bank. The cashier and the president done the business.

Now, when that came due that note was paid?

Defendant objects—leading. Overruled. Exception.

A. It was paid. There was $435 paid on the 5th day of January, 1887.

Defendant objects to any evidence under this cause of action as irrelevant, incompetent, and immaterial, and barred by the statute. Overruled. Exception.

To whom was paid each and all of said payments of interest made by you and included in your testimony?

87 A. To the president or cashier of the Schuyler National bank.

When you speak of the Schuyler National bank in your testimony, whenever you have spoken of it, what bank have you reference to?

A. The Schuyler National bank in Schuyler, Colfax county, Nebraska.

What relation does that bank have to this case?

A. It is the bank that I was doing business with at those several times.

Is it the defendant in this suit?

A. Yes, sir.

Why were each and all of said interest payments made by you?

Defendant objects as leading, incompetent, immaterial, irrelevant. Overruled. Exception.

A. Why, they were paid because they charged it and I agreed to pay it and they took it.

When you say "they," who do you mean?

A. I mean the president or cashier of the Schuyler National bank.

Who acted on the part of the defendant bank?

Defendant objects—immaterial, irrelevant, and incompetent, not the best evidence. Overruled. Exception.

A. Mr. Charley and Will. Sumner, mostly.

Who are Mr. Charley and Will. Sumner?

A. President and cashier of the Schuyler National bank.

In what city, county, and State is the Schuyler National bank situated?

A. Schuyler, Colfax county, Nebraska.

Who, during the times complained of, were its active officers?

Defendant objects—not the best evidence. Overruled. Exception.

A. Mr. Charles Sumner and Mr. W. H. Sumner. Mr. Crewitt was in a little while.

88 Has any part of said payments or any of them of interest paid by you been refunded or paid back to you?

A. No, sir; there has not.

Defendant objects—leading. Overruled. Exception.

A. Not a nickel of it; there is one item, $5 on the last end.

What was that item you spoke of?

A. $5 paid the 21st day of January.

What was that $5 paid for?

A. For 16 days interest.

Defendant objects to any evidence being given on that cause of action as incompetent, irrelevant, and immaterial and barred by the statute. Overruled. Exception.

A. For interest on $1,000.

What length of time?

Defendant objects—incompetent, irrelevant, immaterial. Overruled. Exception.

A. They charged it. I agreed to pay it and they took it.

Who charged it?

A. The cashier of the bank, Will. Sumner.

Who did you pay it to?

A. I paid it to the cashier of the bank; to the Schuyler National.

These payments, where were they made, each and all of them?

Defendant objects—incompetent, immaterial. Overruled. Exception.

A. In the Schuyler National bank, over the counter—cashier's desk—whatever you call it.

Here in this city?

A. Here in Schuyler, Nebraska.

Defendant objects—leading. Overruled. Exception.

89 Cross-examination:

(HODSON:) Now, beginning with the 5th day of May, 1884, with what officers of the bank did you have that transaction, if any you had, on the 5th day of May, 1884?

A. The name of the officers?

Yes, sir.

A. Charley Sumner and Crewitt.

On what day?

A. 5th day of May, 1884.

How much money did you borrow on that day?

A. $2,600.

State everything that was said and done there at that transaction between you and the parties concerned.

A. Well, I borrowed $2,600, and they reserved $80.60 for interest.

Is that what you said?

A. Is that what I said?

I ask you to go on; tell that transaction fully, stating what was said and done. You recollect about it, of course?

A. I don't know what you mean by "what was said?"

What was said there at this transaction you have been trying to tell about?

A. I said I borrowed $2,600.

What did you say to them?

A. I agreed to give them——

What did you say to them? Who did you address first? Who did you have any talk with when you first went in there?

A. Charley Sumner, I guess.

Do you know?

A. Yes; it was Charley Sumner.

What did you say to him?

A. I don't remember what all I said to him. I borrowed $2,600 from him.

I ask you what you said to him.

(COURT:) Relate the conversation as near as you can.

A. Well, I asked him if he would loan me some money, if that is what you are after, and he said yes.

You asked him if he would?

A. If the bank would loan money.

Did you use the word bank?

A. Something to that effect.

90 Now, do you know, Mr. Bollong, what you did say there or what that transaction was?

—. Why, of course, I asked them if they would loan that money and they said yes.

Tell us everything that was done there. What was the first step that you took in negotiating that loan? Just tell us the whole proceedings you went through there to obtain it.

A. Well, as far as the whole conversation we had, why, of course, I don't remember much about that.

(COURT:) Let him give the conversation as near as he can.

A. I asked Mr. Sumner if they would loan me this money and he said yes. I borrowed the money and that was all.

What else was said, if anything, and what was done?

A. Well, I got the money.

What did you get? Did you get anything, or what?

A. Well, I got the money.

Did they count over $2,600 right over the counter to you?

A. No; they counted over $1,700.

In money?

A. In money.

What kind of money was it in—currency?

A. I don't remember. It was part gold and paper, as near as I can recollect.

They counted over $1,700. What was done with the balance?

A. Well, they might have given me credit for it.

Do you know whether they did or not? If so, for how much did they give you credit?

A. I don't remember.

Do you know as a matter of fact?

A. That I borrowed this $2,600?

Do you know as a matter of fact whether they gave you credit for anything on that day?

A. No; I would not say for sure.

Do you know whether they counted a dollar of money over the counter to you or whether you took a dollar of money?

91 A. Yes, sir; I know I got the money.

During that time?

A. Yes, sir.

When you got this money what did you do then in connection with it; you say you got how much money, $1,700?

A. $2,600.

I mean what is counted over the counter?

A. I could not remember to the dollar how much it was.

Pretty close to it, about how much? Estimate it in round numbers, if you can.

A. Well, I don't know how much it was.

What is your best recollection?

A. It is something I ain't thought of since, therefore passed out of my recollection.

The transaction, then, is not fully in your mind, is it? Well, do you know how much money, if any, you got over that counter?

A. I don't know to the dollar how much it was.

In connection with this transaction, do you know whether you got any?

A. Whether I got any money that day or not?

Yes; on this transaction, on this particular transaction, this borrowing of $2,600.

A. Yes, sir; I got some money.

You are sure of that?

A. Yes, sir.

Before you got the money or at the time of it what did you do; what else?

A. In regard to what?

In regard to this transaction that I have called your attention to; don't you know what you did there that day; don't you know the main facts so you can tell this court and give us an intelligible account of that thing?

A. You mean what I done with this money?

I want you to tell this court all the main facts in that transaction, beginning with when you first commenced it until you closed it, right up on that day. Now, who did you see when you first went in there?

A. Why, Crewitt was cashier at that time.

92 Who did you see and commence the negotiation with?

A. There was Charley Sumner and Crewitt in the bank at the time.

Who did you commence negotiation with?

A. I think I spoke to Crewitt first, because Mr. Sumner was running a real-estate office in the back end of the bank. Crewitt sent me to him.

What did you say to Sumner at that time?

Object-; been answered six times.

What did you say to him?

A. I said I asked him for money.

How much did you ask him for?

A. $2,600.

How long did you talk to him in there?

A. Well, I don't know exactly, because there was parties in buying land and one thing and another. It might have been 10, 15, 20, or 30 minutes.

After you got through in there did you close up this transaction in that back office?

A. Well, I could not say for that.

Now, after you got through with that talk with Mr. Sumner in there, and you said you asked him to loan you $2,600, now what did you next do in connection with that matter?

A. Why, I got some money and took it down to Gadsdens.

Don't you know whether you gave a note for it?

A. You say what I done—I gave a note.

For how much did you give a note?

A. $2,600.

Now, you say that there was a certain amount of money counted over the counter to you; do you know how much that was?

A. I don't remember. Crewitt was the man that done the counting.

What was done with the balance of it?

—. I can't say what was done with the balance.

Now, did you sign that note?

A. I endorsed that note.

You did not sign it, then?

A. I signed the note—I signed the note on the back.

93 Who signed it on the face?

A. Father.

Who was the party that signed the note on the face? Well, now, isn't it a fact that there wasn't any cash counted out there at that transaction?

A. No; there was cash counted out there.

Do you know how much?

A. Well, I said before I did not remember.

You don't know how much, but there was, as a matter of fact, some cash counted out. Who was that passed over to?

A. Me.

Was your father there?
A. No, sir.
Did you have this note there with you?
A. Yes, sir; I had that note.
You endorsed it?
A. I endorsed it.
You put your name on the back of it?
A. On the back of it; I borrowed the money; it was me.
Now, Mr. Bollong, you say that your father signed his name on the face of the note—that is, on the front?
A. I will just tell you; father gave a mortgage to secure this note.
(COURT:) Answer the question. The question is whether his father signed the note on the face of it.
A. The first time, that is the way it was done.
He signed the note on the face of it?
A. On the face of it.
And you signed your name on the back of it?
A. On the back of it.
Where did you sign your name on the back of it—at what place?
A. In the Schuyler National bank.
Was there any other name on the face of the *face of the* paper besides your father?
A. I think Palmer.
Was it Thomas L. Palmer?
A. It was the $1,500 note he was on.
You don't know whether he was on this one? There was no other name besides your father's on the face of it, was there?
94 Well, I don't remember now whether there was or not. Father and I always used to sign notes.
Do you know what was done with this balance—this balance between the cash that was counted over the counter and the full amount of the note?
A. The balance of what money?
You know they counted some over the counter; you borrowed $2,600?
A. Yes, sir.
Now, you got some money. Now, what was done with the balance, aside from what was counted over the counter?

Plaintiff objects—gone over.

A. I might have bought steers or something of that kind.
What was done with that money there in the bank; you borrowed so much money?
A. I say I could not tell for certain whether it was all counted over or not. That note they put my name in front of it and father signed it and then I endorsed it the way the note was drawn. The note after that I always signed the front of it.
You and your father signed the face of the note; you did not at that time on this particular one?
A. On the first note?

I mean this one on the 5th day of May.

A. It was made payable to me and I endorsed it.

Then the note was payable to your order?

A. Payable to my order.

Signed by your father?

A. Father gave a mortgage—yes, sir—for security, and they made the note payable to me, and I endorsed it to the bank.

Note payable to you?

A. Yes, sir.

Signed by your father and endorsed by you to the bank?

A. The first time, and after that I always signed the front of it.

95 You say the bank gave you some money—this balance aside from the money. How was it disposed of; what did you do; think you did not get it all in money? What did you get, if anything?

(COURT:) That is, from the bank.

A. Well, I kind of think I got all that money, but then I would not say certain, from the bank.

You think you got it all, or do you know?

(COURT:) Witness, give your recollection, whatever that is.

I ask you now you received a certain amount of cash over the counter? Now, was the amount of cash that you received over the counter the full amount of the loan?

Plaintiff objects, having been already gone over.

A. I don't remember what was done.

Now, what became of this $2,600 note that you have just testified?

A. Why, it was renewed from time to time.

At what period of time, if any?

A. Well, about August 6th it was renewed and I paid $80.60 interest, and about November 7th it was renewed and I paid $100.75 interest; then in February it was renewed and I paid $100.75 interest, and then about the 19th of June it was overdue and I paid $28.60 on the overdue and $46 and $1,100 the same day; about the same time.

We have got down there to the 19th of June. Now, what did you do about this note on the 19th day of June?

A. I renewed $1,500 and paid $46.50 interest.

Mr. Bollong, with whom did you have this transaction on the 19th day of June, 1885?

A. Either the president or cashier of the Schuyler National bank; sometimes one and sometimes the other; I could not say for certain.

I want you to confine yourself right to this time you have 96 fixed.

Plaintiff objects to this instruction on the part of the counsel, and this interference and interruption of his testimony is impertinent and improper.

(COURT:) Counsel has a right to limit the question.

I mean on this occasion which one was it?

A. Well, I said I could not say which it was at present.

Now go on and state fully that transaction on that day between yourself and the persons representing the Schuyler National bank with whom you had it. State fully about it.

A. Fully about what?

About that transaction on the 19th day of June, 1885.

A. Well, I said there was $1,100 paid about that time.

What did you do that time?

A. I renewed a $1,500 note and paid $46 interest.

Go on; tell the——

A. I gave a note for $1,500.

How did you come to give them a note — $1,500?

A. The renewal of $1,500 on the balance of the $2,600 is how I gave it.

Was that all the money that you paid on that day to the bank?

A. I don't know as it was; I might have owed them another little note or something of that kind that I paid—I could not say in regard to that—or an overdraft or something of the kind.

Then you don't know which one of the officers you had this transaction with?

A. I don't know.

And are you able to state anything further about it than what you have already stated? How did you come to pay this $1,100?

A. Why, Neil had shipped some cattle and was owing me at that time is how it was paid. Neil was owing me at that time.

(COURT:) The question is not how you got the money, but how you came to pay the $1,100.

A. Because I owed it to the bank.

Do you know who you paid it to?

97 A. Cashier or president of the Schuyler National bank.

You don't know which?

A. I don't know which.

Do you know whether you had any conversation with either one or both of them on that day with reference to this transaction?

A. I could not say.

How do you know, then, that you paid the bank $1,100 on that day?

A. Why, I owed them $2,600, and I paid them that about that time.

I ask you how you know it.

A. I just said that Neil was owing us, and he paid me, and I paid it to the bank.

Plaintiff objects—improper interference and as having been already gone over.

Mr. Bollong, after you paid that $1,100 that you testified about what else did you do there at the bank on this 19th day of June, 1885?

A. I don't know.

Do you know whether you did anything there on that day aside from paying this $1,100?

A. I don't know.

Go on and tell what was done.

A. Of course I gave a note of $1,500.

Who did you give it to?

A. To the Schuyler National bank.

Well, to whom in the Schuyler National bank?

A. To the president or cashier.

Do you know which?

A. No; I don't.

How much was that note for?

A. For $1,500.

Who signed the note?

A. Father and I signed the note, I think.

Yourself and your father; where did you sign it, on the face or back?

A. On the face of it.

You say that this $1,500 for which you executed a note on that day was the balance of the $2,600 after deducting this $1,100 paid on that day, was it?

A. $1,500; yes, sir.

Was that $1,100 paid in cash or otherwise?

98 A. It might have been. I think it was drafts or something of that kind.

Was that all the money that you paid on that day to the bank?

A. I don't remember. There was $46.50 interest *was* paid about that time.

How was that paid?

A. That was paid by check.

Whose check?

A. It was paid by a check of Bollong & Co.'s, I guess.

That is a check on the fends of Bollong & Co.?

A. I think so. I had to borrow a little money once in awhile to pay interest with.

The 34 days' interest there that you have testified about, how did you pay that $28.60?

A. No; that 19th day of June was paid with my check.

Have you the check there?

A. Yes; I have.

Was that all you paid on that day?

A. Well, I could not say whether it is or not.

Now, is that all there is to that transaction on the 19th day of June, 1885?

A. Well, I will tell you. I gave a note; renewed a note.

I ask you if that is all there is; was that all, what you have testified to here now—was that all that was said and done between you and the other parties on that day?

A. I can't remember the conversation now.

Was there anything else done?

A. I don't know.

What else was done, if anything, about this note?

A. I told you a minute ago I renewed it for 90 days and paid $46.50 interest.

When did you do that?

A. About the 19th of June.

I am asking you what was done at some subsequent time with reference to it, if anything. Do you know?

A. It was renewed from time to time.

When was it renewed?

A. September 18 it was renewed again.

99 Now, when you say you renewed a note what do you mean by it?

A. Took up the old note and gave a new one.

For how long did you renew it?

A. 90 days.

Go on; tell the whole transaction.

A. About December 21 it was renewed again.

I want to confine you to that time in September. Where did you renew it?

A. In the Schuyler National bank.

Who was there? What year was that?

A. 1885.

September 19th?

A. September 18th.

Who did you transact the business with there?

A. I guess it was Will's by the looks of the writing.

Do you know?

A. It was the president or cashier of the Schuyler National bank.

You don't know which one it was?

A. It is Will's writing.

I ask you if you know.

A. I don't know.

Now, do you know what, if anything, was said or done between you on this occasion with reference to this transaction at the time you renewed that note—if you had any conversation with one another?

A. Why, I paid the interest and renewed the note for 90 days.

The inquiry is what you and the bank officers said—what you did.

A. I don't remember what was said. Will always wanted to be getting the interest higher is all I know, and I used always to try to get it as low as possible. He was always kicking about a fellow wanting to pay back interest.

You don't know anything that was said and done on that day, aside from what you have said, with reference to this transaction on this note?

A. I don't remember all the conversation; no.

Do you recollect any of it?

A. I remember what the rates of interest were.

100 I ask you if you remember any of it.

A. A man going into a bank to renew a note there is never much said one way or the other.

The question is whether you recall any of it.

A. No, sir.

Who drew up that note on that day?

A. Part of it is my handwriting, but Will's is the lower part of it. I wrote in part of the note myself.

Who signed that note?

A. Myself; it is my own hand.

Any one else?

A. Palmer's name is on the note; myself and Palmer; it was my note.

Now, if I understand you wrote part of that note, where did you write it—in the bank?

A. I can't say where I wrote it.

How did you pay that interest, if any, on that day?

A. Sometimes I paid the interest with a check and sometimes I paid it with money.

Do you know on this occasion?

A. I don't remember now.

Do you remember the fact of paying any at all?

A. Yes, sir; I do.

Who did you pay it to?

A. The cashier or president of the bank.

Who was that at that time?

A. 1885—Will Sumner, I guess, was cashier then.

Do you know which one you paid this money over to?

A. I don't remember.

You don't know which one, nor whether you paid it in money or check?

A. No; I don't.

Do you remember how much you did pay?

A. Yes, sir; I paid $46.50.

How do you know that?

A. I know that is what—they were charging that at that time.

You know that by reasoning?

A. Yes, sir. I never borrowed a dollar from them for less than 12%.

As a matter of fact, you don't know, do you?

A. Don't know what?

101 What amount did you pay there?

A. I say I paid $46.50.

On that day?

A. About that day; yes, sir.

The way that you arrive at that is that you infer that they charged that from the fact that you think that was the prevailing rate, is it?

A. I know that was their rate. Perhaps I might have paid that with a check, but I don't remember at present. I know there was

a lot of checks, stubs I looked over, and took the rates off that. because they always filled me a stub out.

In this particular instance you don't know whether you paid it by check or cash?

A. I don't remember whether check or cash.

Do you as a matter of fact remember that amount, and know that is correct?

A. Yes, sir; I know that is correct because they never charged me less than one per cent.

You don't know it as a fact; you reason on it?

A. Yes, sir; I know it to be a fact; there is no reason about it.

Now, after this transaction in September, Mr. Bollong, what transaction did you next have with the Schuyler National bank, if any, after this transaction on the 18th day of September, 1885?

A. Well, about the 21st of December, 1885, I renewed a note. I renewed the $1,500 note for 90 days, and paid $69.75 interest. That is the way he raised the interest a half per cent. a month.

What date is that?

A. About the 21st of December; raised it from 18 to 12.

With what officer of the bank did you have that transaction?

A. Either the president or cashier of the bank. I don't just remember.

You remember where you had it?

A. In the Schuyler National bank.

Do you remember who was present at that time?

102 A. I don't just remember, that particular transaction, who was present, cashier or president. The cashier was generally in the bank unless it was near dinner time or something of that kind.

Do you remember anything about that transaction aside from what you said you renewed it on that day? If so, state what it was.

A. Anything particular what took place?

What took place with reference to this matter?

A. I know he raised the interest.

I ask you if you know anything else.

A. I don't just remember what else.

Do you know to whom you paid that interest?

A. To the cashier of the bank; he generally was there.

You don't know, do you, in this instance?

A. I don't know which of them it was; one or the other of them.

How did you pay it, by check or money?

A. That on that day was paid by check.

Whose check?

A. My own check.

Who signed that note?

A. Palmer and father.

What is your father's name?

A. Neil Bollong.

And what is Palmer's name?

A. T. L.; Thomas.

Thomas L.?

A. Yes, sir.

(PHELPS:) Did you sign it also?

A. Yes; my name was on it first.

Was any names on the back of it?

A. No; I guess not.

None is there?

A. No.

What was done with that note after that, if anything?

A. Why, it was renewed.

When? Go on, tell us all about it. Describe that trans-
103 action of renewal fully.

A. The 23rd of December. That would run it until about the 23rd of March.

What was done? Go right on, tell us.

A. It was renewed from time to time until it finally went into that October settlement—October 4, 1886.

Describe fully that transaction of renewal on the 23rd of March or whatever date it was; 26th of March, 1886; go right on, tell what you did.

A. Well, I say he used to renew it and pay the interest.

What do you mean by renewing it?

A. Taking up the old note and giving a new one.

Who was on the old note?

A. Palmer and father.

Who was on the new note?

A. The same names generally; once in awhile one would happen to be dropped out for awhile.

Who was on this one of March 26, 1886?

A. I haven't got that note.

104 Did they sign it?

A. I expect so; they generally signed the notes with me.

That is, your father, Neil Bollong, and Palmer?

A. Yes, sir.

How did you pay that interest on that day, if any you paid?

A. I don't remember.

Do you know how much you paid?

A. It would be about—you mean on that day, on the 24th of March? That note had run about 34 days overdue; the 26th of April, it would be about 34 days overdue; it would be about $24 and something on that.

It wasn't renewed, then, in March, was it; was it renewed, then, in March?

A. I think it was renewed for 30 days.

In March, do you know; how is that?

A. That was 34 days overdue; that run it until the 26th of April, 1886.

That note there of December 21, 1885, what became of it?

A. That is the one I was just talking about; that was renewed and it run it——

Until when?

A. Until about the 26th day of March; I mean about the 24th or 25th day of March; 24th, I guess.

Renewed for how long?

A. For 90 days.

What became of it at the end of that 90 days?

A. Why, it run about 34 days overdue, until April 26th, and it was renewed April 26th for 90 days.

Where was it renewed?

A. In the Schuyler National bank?

Go on, tell us all about it.

A. When it was renewed on the 26th I paid $69.75 interest.

Was that all you did on that day there with reference to this matter?

A. I think so.

You did nothing but pay the interest?

A. Paid the interest and renewed the note and gave a new note.

105 What did you do with the old note?

A. There is part of them here and part of them in the files.

(COURT:) One note is all he is inquiring about; what he did with the old note.

A. Here is the April note; I hav-n't got the December note; I don't know what became of it.

What became of it there in the bank?

A. I took it up there in the bank.

Now, as each one of those notes were taken up what did they do with them there in the bank?

A. After they were taken up they marked on them "paid."

Each and every one of them?

A. Yes, sir.

Were they surrendered to you then?

A. Yes, sir.

Now, this note that ran until April 26th, 1886, what was done with it then? You said it ran 34 days past due, that note in December?

A. I took it up.

You renewed it on the 26th of April?

A. Yes, sir.

Go on and tell about that transaction of renewal.

Objected to—gone over.

A. $69.75.

Tell the whole of it.

A. That had overrun, the settlement we had the 4th day of October; that was settled *in* on that day.

It wa-n't settled in April, was it?

A. I gave a note in April for 90 days.

Who did you give it to?

A. To the cashier of the Schuyler National bank.

Who was the cashier?

A. Well, it is Will.'s writing on the note.

Was he present there that day and conducting the negotiations between you and him in reference to this transaction?

A. On that 26th day of April?

106 Yes.

—. I don't remember; I renewed this note on that day.

How did you pay that interest, if you paid any?

A. With a check.

Whose check?

A. My own check.

What was the amount of the check?

A. $69.75.

Who signed the note?

A. Father and Palmer, Neil Bollong and myself.

Neil Bollong, Thomas F. Palmer, and yourself?

A. Yes, sir.

What became of that note?

—. Well, it was finally settled; it went into a settlement we had on the 4th of October, 1886; that $1,500 note.

107 What became of it in that settlement?

A. I paid——

What became of the note?

A. I just said it went into a settlement we had that day.

What became of the note?

A. I just showed Mr. Hodsdon the note.

(COURT:) The question was what became of that note.

A. I have the note right here. I took the note up and they stamped on it "paid."

When was it surrendered?

A. October 4, 1886.

Now, what did you do on the 4th day of October there?

A. We had a settlement on that day. I paid $2,463.32 and there was a balance of $1,390.21, which I gave a note for $1,435.

How did you pay that amount you have testified to?

A. It was some notes of Whitfield's.

You paid it in notes of Whitfield?

A. Yes, sir; I paid it in notes of Whitfield. The way this paper came to be overdue, they would not renew it. How those notes came to be overdue, they wasn't satisfied with one and a half per cent.; they cut me on the notes.

(HODSDON:) Move that be stricken out; irresponsive.

A. They shaved the notes. They shaved this paper I had there for collateral.

You offered that paper in payment of those notes, didn't you?

A. I wanted to renew those notes. I was there several times to the bank to renew those notes; they would not renew them. I told them if Whitfield wasn't able to pay I would pay for the loan myself. No, they wasn't satisfied with one and a half per cent.;

108 they wanted to shave the paper that I had up there for collateral. Mr. Sumner done the figuring. There is his figuring on that paper.

You did, as a matter of fact, apply these Whitfield notes on the payment of this?

A. Yes; that is what I done.

Now, that $1,500 note was taken up and surrendered there, was it?

A. On the 4th day of October, I told you before, that we went into that settlement we had on that day.

You got it back?

A. The 4th day we had a settlement; on the 5th you gave me all those notes back.

I want to call your attention to a transaction that you had, if any, with the Schuyler National bank on the 26th day of May, 1884.

A. I borrowed $1,500 from them.

Go on, tell the transaction fully.

Plaintiff objects to this conversation and manner of proceeding on the part of the cross-examination.

(COURT:) The remarks—the lecture of the counsel to the witness is out of place.

A. I borrowed $2,600 and they gave me credit for——

You borrowed how much?

A. I gave them a note for $1,500 and they gave me credit for $1,423.50.

They gave credit to you?

A. Yes, sir; to me; to Bollong & Co.

They gave the credit to Bollong & Co. This credit was given to whom?

A. To Bollong & Co.

$1,423, was it?

A. Yes; $1,423.50.

Who signed this note, $1,500?

A. Palmer.

Who else?

A. Myself.

You and Thomas L. Palmer signed this note of $1,500?

A. Yes, sir.

Was anything else done there that day aside from execut-
109 ing this note of $1,500 signed by yourself and Palmer and receiving this credit of $1,423.50; was that all that was done there in reference to this transaction?

A. That day. I don't understand you. If that was all that was done in reference to this transaction. I borrowed this $1,500. I gave a note for $1,500 on that time, and they gave me credit for $1,423.50. Did you want to know what was done with that $1,500?

They credited you $1,423 on the account of Bollong & Co.?

A. Yes.

And yourself and Palmer executed that note?

A. Palmer and I—yes; or myself and Palmer.

And delivered it to the bank?

A. Delivered it to the bank.

Was that all there was of it—all there was of that transaction?

A. Why, I think so on that day; that is all there was of that at that time.

In connection with that transaction?

A. Yes, sir.

Was that all you received out of it?

A. Was that all I received of this?

Yes, sir.

A. Yes.

Well, with whom did you have that transaction?

A. With the cashier or president of the Schuyler National bank.

Do you know which one?

A. I think at that time Mr. Charley Sumner was there or Crewitt. Will. wasn't in the bank at that time.

I am asking you do you know which one of those you had that transaction with—which officer?

A. Charley Sumner I think it was.

You think it was?

A. Yes; Charles' writing in there.

110 Now, what became of that $1,500 note? How long was it to run for?

A. 90 days.

What happened at the end of the 90 days, if anything?

A. At the end of 90 days it was renewed.

Tell what you did when you went there and renewed it.

A. I renewed it and paid $46.50 interest.

When I ask you to tell about this renewal transaction I want you to begin and tell the proceedings?

A. Aasked them if they would renew it. I suppose they said yes.

What did you do?

A. They filled out the note and I signed it.

Anybody else?

A. Yes, sir; Palmer or father usually signed it.

Who did this one?

A. Palmer and my father both.

Palmer and your father?

A. Not on this.

Just yourself and Palmer?

A. Yes, sir.

What else was done after drawing up the note and signing it?

A. I gave $46.50 interest.

Whose check?

A. That check was a check of Bollong & Co.

Bollong & Co.'s check?

A. Yes.

A check on their account?

A. A check on their account at that time.

How long was this note to run?

A. 90 days.

What was done at the end of that time?

A. Renewed at the end of 90 days.
Go on, state the whole proceedings on the renewal fully.
A. On the time that it is not in the petition.
I call you- attention to the end of this 90 days and you
111 say it was renewed. I ask you now to go on and state fully the proceedings in connection with the renewal.
A. It was renewed.
Tell what you did there.
A. November 26th it was renewed.
Well, now, tell what you did and what was done on the part of both of you on that day in connection with that transaction.
A. Why, I renewed the note and paid $46.50 interest.
I ask you to state everything that was done there, as near as you can recollect it.

Plaintiff objects to these remarks of the counsel to the witness.

A. Renewed it and paid the interest.
When you renewed it what was the first think you did?
A. I signed the note; got a signer on with me.
Who was the signer?
A. Palmer.
Who wrote up the note?
A. I wrote part of it myself.
You wrote part of this and you signed it, did you?
A. Yes, sir; I signed it.
And what was done with it then?
A. It was taken to the bank.
What did you do then?
A. Renewed it for 90 days, gave a note to the bank, and paid the interest.
How much interest did you pay, if any?
A. $46.50.
How did you pay it?
A. Paid that by check.
Whose check?
A. That was Bollong & Co.'s check.
That is checked on there if it is there in the bank, is it?
A. I suppose so.
Well, how long was that note to run?
112 A. Why, it was to run 90 days.
What was done at the end of the 90 days?
A. Well, it was renewed at the end of the 90 days, which would make it about February 27th.
When you renewed it what did you do?
A. Why, I renewed it, just the same as I did before.

Plaintiff objects—improper cross-examination and as to matters not in the petition.

What became of that note that was renewed in February?
A. I took it up and gave a new note.
That note that was renewed in February—how long had it to run?

A. That had run until about——
For how long a time?

(PHELPS:) I ask that his testimony in cross-examination, where he says that the checks given for Bollong & Co. for the interest in August and November and February, be stricken out.
(HODSDON:) We agree to that.

Up to February there—how long did that note run from February?
A. Until about May 29th.
How many days?
A. 90 days.
What was done about it on that 29th day of May?
A. It was renewed and $46.50 interest paid.
Now, by renewing it, state what you mean by that. State fully the transaction.
A. Took the old note up and gave a new one, 90 days.
Who signed that note?
A. T. L. Palmer.
Thomas L. Palmer and yourself?
113 A. Once in awhile there would be a name left out. Right there—Will Sumner wrote this there. Father and I signed the note.
Your *fta*her and yourself signed the note?
A. Yes, sir.
How was that interest paid?
A. It was paid by check.
Whose check?
A. Bailey & Bollong's.
What became of that note at the end of the 90 days?
A. At the end of the 90 days I paid $500 and $31 for interest.
You paid $500?
A. $500 on the principal and $31 for interest.
You paid $500 when?
A. August 31st.
How was it paid?
A. Paid by check.
Whose check?
A. Bailey & Bollong's. I borrowed the money from Bailey to pay it with.

Plaintiff moves that be stricken out.

How much was that check?
A. $531—$500 for principal and $31 for interest—$1,000 for 90 days.
That was Bailey & Bollong's check?
A. Yes, sir.
Who drew it?
A. I drew it myself.
Was it drawn against funds in the bank there on deposit?
A. Yes; it was.

Taken and applied upon this note?
A. Yes, sir.
What became of that—how long was that note to run?
A. It was to run 90 days.
That reduced it to what sum?
A. $1,000 when the $500 was paid.
How long did it run?
A. It ran until December 2nd, and I paid $600 on the principal.

114 You paid $600 on what?
A. On the principal note. It is $1,000 note, and I paid $600, which left it $400.
Who did you pay that to?
A. It is Will Sumner's writing on the back of the note.
Who did you pay it to?
A. The cashier of the Schuyler National bank.
How was it paid?
A. How was this paid?
Yes, sir.
A. Why, it was paid by check. It is money, though, that I borrowed at the time.
Whose check?
A. My own check.
Now, what was done on the 5th day of December there about that matter?
A. I renewed the note I spoke about, paying the $600, then renewed $400 for 30 days.
In other words, you paid $600 and executed a note for $400?
A. Yes, sir.
Who executed that note?
A. I did.
Anybody else?
A. Father.
How long had that note to run?
A. Palmer was to sign it, but he didn't happen to come to town. I signed it, and father.
What is your father's name?
A. Neil Bollong.
How long did that note run?
A. That note ran for 30 days from December. I renewed it for 30 days and gave a new note.
This was when?
A. About December 2nd, and paid $6.60 interest for 30 days.
Now, what was done with that at the end of that time?
A. At the end of 30 days?
Yes, sir.

115 A. Why, that would make it about January 4. It was renewed for 90 days.
Was it renewed on that day?
A. The 4th of January?
Yes.

A. I guess it was January 4, 1886.

What was renewed on that day?

A. This note was renewed for 90 days, and $18.60 paid for interest.

Who paid it?

A. I did.

How did you pay it?

A. Gave my own check for it.

How was that paid?

A. Well, in the Schuyler National bank.

Do you know who he paid it to?

A. The cashier of the bank.

You paid it to him that day, did you?

A. Well, it was either the cashier or president; Will's writing on the note.

I simply ask you if you know whether you did or did not.

A. Well, I won't say it is one or the other—the cashier or president of the bank.

I ask you if you know.

A. No; I don't.

How long did that note run?

A. It ran 90 days; that run until about April 7th.

What did you do with it then?

A. Renewed it and paid $6.60 interest for 30 days.

Who signed the note?

A. I did, and father.

What is your father's name?

A. Neil Bollong.

What was done at the end of that time?

A. Why, it was renewed about the 10th of May for 90 days.

By renewing it what do you mean?

A. I mean by taking up the old one and giving a new note.

Who executed the note?

A. I did.

Who else?

A. Father.

116 Who is your father?

A. Neil Bollong.

How did you pay that interest on the 10th of May?

A. I gave a check for $18.60, and that note the 15th was put into this $1,150 note that I had.

This $400 note?

A. Yes; that was renewed the 10th, and the 15th it went into the $1,150 note.

This $400 went into the $1,150 note?

A. Yes, sir.

How many notes did you settle there on the 4th day of October, 1886?

A. Four notes, I guess.

What were they?

A. One was $1,150 note, one was $1,500 note, one was $100 note,

one was $1,000 note. The $100 was the note and the $2.40 was the interest.

Now, Mr. Bollong, I want to call your attention to the 8th day of December, 1885. State what transaction or business you had with the defendant on that day, if any.

A. The 8th, that was $500 I borrowed on the 8th of December, and they reserved $7.50 interest for 30 days.

What do you mean by reserved?

A. I mean retained out.

Tell us how it was done.

A. I gave a note for $500 and they gave me credit, or gave me——

Do you know how much they gave you?

A. $492.50.

What was that; money—that $492, did they count it out in money to you?

A. No; I think they gave me credit for that.

Do you know upon that day they entered up upon their books $492.50 to your credit in connection with this transaction?

A. In that transaction they might have given me credit for $500, and I gave them the check back for the interest in this case.

117 Do you know which way it was?

A. I think that is the way it was; I won't say certain.

You don't know which way it was, do you?

A. I think they gave me credit this time for that $500, and I gave them a check for the interest, if I remember right.

Do you know who — made the check payable to?

A. I don't remember.

You haven't the check with you, have you?

A. No.

Not in your possession, that you know of?

A. I shouldn't wonder but that is up among the old checks; probably two bushels of them up there. I never looked them over.

You think, then, in this case there was nothing reserved out; that is your best recollection, is it?

A. I think they gave me credit for that $500.

In full?

A. Yes; I would not say positive, though, but I think that is the way. I can tell if I would look up some of those papers.

How long had they to run?

A. 30 days.

What happened then?

A. It was renewed at the end of 30 days for 90 days; paid $27 interest.

What did you do when you renewed it?

A. Gave a new note and took up the old one.

Who signed both those notes?

A. Father.

And yourself?

A. And myself.

How did you pay the interest on that note of January 9, 1886?

A. Those notes are the ones that they have there. How did I pay the interest?

118 I mean this particular one I am talking about, this one that renewed the $500 note.

A. I borrowed $100 more; so they kept the interest back, and they advanced the money I borrowed when I renewed it each time.

I am asking you if you know.

A. Yes, sir; I am pretty sure; kept it out of the $100 I borrowed each time.

What was done with the balance?

A. Balance of what?

You got an extra $100 this time?

A. I don't know what I done with the balance of the $100.

What they had they kept it there?

A. Paid it over to me.

Paid over the $100?

A. I think so; I ain't sure, but I think that is what they done.

How long had that note to run?

A. It was to run 90 days.

Well, what was done then? What occurred at the end of that 90 days?

A. At the end of 90 days it was renewed for 30 days, and I paid them $10.50 interest. I borrowed another $100, which made it $700.

That is, you executed another note?

A. Executed a new note.

Who executed that note?

A. I did.

Anybody else?

A. Father was on it.

I am inquiring about the $600 note. Is that $600 note executed by H. C. Bollong and Neil Bollong?

A. Yes; H. C. Bollong and Neil Bollong.

The next note following, is that executed by the same parties?

A. Yes, sir; that is $700.

And all these notes that you have testified about that are executed by H. C. Bollong and Neil Bollong and H. C. Bollong

119 and Thomas Palmer were all executed to Schuyler National bank, were they?

A. To the Schuyler National bank.

What became of that $600 note at the end of the 90 days?

A. It was renewed at the end of 90 days for 30 days. There was another $100 borrowed, which made it $700, and when that $600 was renewed the $100 more was borrowed, which made it $700, and a new note executed for 30 days.

By the same parties that executed the $600 note?

A. The same parties that executed the $600 note, $10.50 interest paid.

How was that interest paid?

A. It was paid—I think it was paid by check.

Do you know whether it was paid by check or cash?

A. I think it was paid by check.

Whose check?

A. My check.

Are you certain about that; do you know?

A. I don't just remember whether it was my own check or whether it was taken into the $100 that I borrowed and $10.50 taken out or whether I gave a check; it was one or the other.

What became of that at the end of the 30 days?

A. At the end of 30 days, that $700?

Yes, sir.

A. That would run it to May 15th.

Well, April 8th was the date of it, if I have it correctly.

A. Then it ran overtime a few days. On the 15th of May it went into a note with $400, with $450, $400 of another note that we have been speaking about, and another balance of $50, which made it $1,150.

In other words, there was a new note made of it?

120 A. A new note; yes, sir.

Who signed that $1,150 note?

A. I signed it and father signed it, Neil Bollong.

Who was it executed to?

A. Schuyler National bank.

By those parties you have named?

A. Yes.

What was the date of it?

A. May 15th, 1886.

I want to call your attention to the note dated November 7, 1885?

A. That was a note for $1,000.

State the transaction concerning that note.

A. Well, I borrowed $1,000 for 30 days, and paid $16.60 or they reserved out $16.50.

Who executed that $1,000 note?

A. I did.

Who signed it?

A. H. C. Bollong and Neil Bollong.

Who executed that mortgage you have referred to; you have it there?

A. They have got the mortgage over there.

(Handing witness paper): Who executed that mortgage?

A. It must be Charley Sumner, I guess, by the looks of the writing.

Who signed it?

A. H. C. and Neil Bollong.

This $16.50 you have told about, who paid that—how was it paid?

A. I think it was reserved out.

Do you know as a matter of fact?

A. I think that it was reserved out.

You don't know?

A. Yes; that is the way they generally done; was just to take it out.

In this particular case, this $1,000 note, November 7, 1885, was that reserved or paid; if paid, how was it paid?

A. I think, reserved out.

121 What was done with the balance paid in cash or credited, or how was it disposed of?

A. I think it was credited.

Do you know?

A. Yes; it was credited.

To whom was it credited?

A. To H. C. Bollong—to myself.

By whom?

A. The cashier of the Schuyler National bank.

How long did that note run—that $1,000 note I just called your attention to?

A. It run 30 days.

What became of that at that time—what was done when it matured?

A. At the end of 30 days it was renewed.

That is, you executed a new note?

A. Executed a new note.

Who did?

A. I did—H. C. Bollong—and Neil Bollong.

Who was present when that was executed, who was there at the transaction?

A. Well, the cashier or president of the bank.

Do you know which one?

A. The cashier was generally there.

When it was renewed at the end of 30 days who executed that renewal note?

A. I did.

Who signed it?

A. Myself first and Neil Bollong.

What did you do with it when it was executed—what was done with it?

A. When you got that note signed?

And executed, what did you do with it?

A. Why, I gave it to the cashier of the bank.

What else was done?

A. I paid him $46.50 interest.

How did you pay that?

A. Paid it in check.

Whose check?

A. My own check.

To whom was the check drawn?

A. To the Schuyler National bank.

122 It was payable to order or bearer?

A. Schuyler National bank or bearer.

How long was that note to run?

A. It run from the 10th of December until the 13th of May.

How long?

A. 90 days, and there was a new note executed and $46.50 interest paid for 90 days.

Who executed that renewal note?

A. I did, and father.

How long was that note to run?

A. That run until about the 14th of June.

What was done with it then?

A. Why, it was renewed then for 60 days, $31.50 interest paid.

Who executed the renewal note?

A. I did, and father.

To whom was it executed?

A. To the Schuyler National bank.

For how long?

A. For 60 days.

How was that interest paid?

A. I don't know whether that was paid in money or check. I think that was paid in money.

Do you know?

A. I don't know; I think it was money, though.

Do you know who — delivered it to at the bank?

A. To the cashier or president.

Do you know which one of them?

A. No; I could not tell whether that $1,000. I could tell if I had my bank book whether that was deposited or whether they paid me that money you asked me a while ago.

How long had that note to run?

A. 60 days, but that is only notes that went into the settlement we had on the 4th day of October.

123 Was that note surrendered to you on the 4th day of October?

A. It was on the 5th; the 4th we had the settlement and the 5th he gave me the note.

That note that was surrendered on the 5th day of October was signed by yourself and Neil Bollong?

A. Neil Bollong; yes, sir.

Now, I want to call your attention to the note of February 15, 1886.

A. $300 note.

You may state about that transaction fully.

A. Why I borrowed $300?

Who did you borrow it of?

A. Cashier or president of the bank. Cashier, I guess.

Do you know who you had the negotiations with?

A. I don't remember at present.

You don't know the person you transacted the business with?

A. The cashier was generally there.

On this occasion, I mean.

A. On that occasion I don't remember. I think that is Will.'s writing in the note.

What did you do?

A. I borrowed $300 for 90 days.

How did you get that $300?
A. I executed a note and got it.
Who executed the note?
A. I did.
Any one else?
A. I don't think there was anybody signed with me on that note; the note is right over there.
(PHELPS:) This Exhibit No. 6?
A. I signed that alone.
You executed that yourself?
A. Yes, sir.
Do you know what became of that note? How long was it to run?
A. 90 days.
What happened at the end of the 90 days?
A. I paid it at the end of 90 days.
124 You paid it in full at the end of 90 days?
A. Yes, sir.
How did you pay it—by check, cash, or how?
A. I don't remember.
To whom did you pay it?
A. Cashier of the bank, I suppose.
Do you know?
A. Either the cashier or president—who would be in there at the time.
I mean in this particular instance.
A. No; I don't.
Now, I want to call your attention to the note dated July 14, 1886.
A. That is $100 note?
Yes, sir.
A. Yes; I executed that loan.
How long has that to run?
A. 30 days; charged $1.50 interest.
Do you know with whom you had the transaction?
A. No; I don't just remember which it was.
Who executed the note?
A. I did—H. C. Bollong.
Do you remember anything about the execution of it or the transaction had at the time?
A. Not in particular.
Well, what became of it?
A. It went into that settlement we had October 4, 1886.
It was figured in?
A. Figured in; yes, sir.
As a part of that amount due?
A. Yes, sir.
Now, I want to call your attention to another note there—$225. Who executed that note?
A. H. C. Bollong and N. R. Bollong.
To whom was it executed?

A. To the Schuyler National bank.
Tell all about that transaction.
A. Tell all about it in what shape?
Tell what you did; how did you come to give that note?
A. I gave that note and got $225. Yes, I think they gave
125 me credit for $225 and I gave a check for $10.50 for 90 days.
Whose check?
A. My own check.
Do you recollect about that?
A. Well, I don't remember.
About giving the check?
A. Yes, sir.
You recollect giving the check for $10.50?
A. $10.50.
When did you give it?
A. May 11, 1885.
What became of that note?
A. I paid it or took it up about August 21st, 1885.
And that note, you say, was executed by yourself and Neil R. Bollong?
A. By myself and Neil R.; yes, sir.
Now, this note that you testified about that you executed on the 4th day of October, 1886; that $1,435 note. Let us see, now. I don't quite get your testimony in your examination-in-chief on that. What was the amount of the first payment you made on there?
A. On the 5th day of January, you mean?
The first payment you made.
A. On the $1,435 note?
Yes, sir.
A. On the 5th day of January paid $1,435.
Now, to whom did you pay that?
A. To the cashier of the bank—Schuyler National bank.
How did you pay it, by money or check?
A. I think it was money.
When—how soon after was the final payment made?
A. January 21st.
Was that made in the same way?
A. Yes, sir; I paid it with money; all but the $5. I think that was a check.
All of those notes that I have called your attention to were executed to the Schuyler National bank, were they?
A. Yes, sir.
And in the manner that you have testified?
A. Yes, sir.

126 Redirect examination:

(PHELPS:) Now, with reference to that first $2,600 borrowed in May, 1884, you say that that note your father signed as principal, it was made payable to you, and you endorsed it. Now, I will ask

you why it was done that way and at whose suggestion, if anybody's.

Defendant objects—already gone over; immaterial, irrelevant, and incompetent. Overruled. Exception.

A. It was signed that way, so if it was not paid at maturity they would protest it.

At whose suggestion was it signed that way?

A. The cashier of the bank.

Was that upon your application to borrow $2,600 for yourself?

A. Yes.

Had your father any interest in that note except as surety for you?

Defendant objects—incompetent, immaterial, irrelevant, and as calling for a conclusion from the witness. Overruled. Exception.

A. He had not.

Was the fact understood or known by the bank at that time?

Defendant objects—immaterial, irrelevant, incompetent, calling for a conclusion from the witness.

A. It was.

Objection sustained.

Now, was this note of May 26, 1884, being the $1,500 note that you say, if I remember your testimony, was placed to the credit of Bollong & Co.? Who borrowed that money, and for whom was it borrowed?

Defendant objects—incompetent, immaterial, irrelevant.
127 The transaction has already been gone over once fully and completely. Overruled. Exception.

A. I borrowed it and it was placed to the credit of Bollong & Co. for the purpose of buying hogs.

Defendant moves that be stricken out as incompetent, immaterial, irrelevant. Overruled. Exception.

The Bailey and Bollong check for $500 and other payments of interest made by you with Bailey & Bollong's checks, if any—state whose money that was that was paid or state who the check belonged to when you paid it.

Defendant objects—immaterial, irrelevant, incompetent, calling for the conclusion of the witness. Overruled. Exception.

A. At that time Bailey and I were doing business here; the money belonged to Bailey & Bollong.

The money that the check was made against?

A. Yes.

Now, when it was paid or when the check was drawn—Bailey & Bollong's checks—to whom was that check charged and whose was it from the time that it was drawn and charged, if to anybody?

Defendant objects—immaterial, irrelevant, incompetent, and as calling for a conclusion from the witness. Overruled. Exception.

A. Why, it would be charged to me.
Was it charged to you?
A. Yes, sir; it was.
Then who owned the check?
A. I did.

Defendant objects—calling for conclusion from the witness, irrelevant, incompetent, and immaterial. Overruled. Exception.

A. I did.
Now, state whether you, as well as your sureties that you have named, signed all the notes you have mentioned and described in your cross-examination.

128

Defendant objects—incompetent, immaterial, irrelevant, calling for a conclusion from the witness, assuming a state of facts not proven here. Overruled. Exception.

A. Yes, sir.
Now, I will call your attention to Exhibit No. 6 and ask you when last before to-day you saw that note.
A. The last time the court sat.
The trial of this case before?
A. Yes, sir.
Now, I will ask you whether the endorsement now on this note in writing—in Will Sumner's hand—"without recourse," and the rubber stamp, "Schuyler National bank," was at that time on the back of that note.

Defendant objects—incompetent and that it is irrelevant and immaterial to the issues in this case.

(COURT:) If that is the object, I think the testimony is not proper at this time, but in rebuttal.

Recross-examination.

(HODSDON:) This check of Bailey & Bollong that you spoke about—who kept the books of Bailey & Bollong?

Defendant objects—incompetent, immaterial, not proper cross-examination. Overruled.

Who kept the books of Bailey & Bollong?
A. Sam. Curry.
Who has possession of those books now?
A. Sam. Curry, I guess.
Where is Sam. Curry?
A. Washington Territory.

129

How do you know this was charged up there on the books?
A. Why, Bailey and I had a settlement.
I ask you how you know this particular check was charged up on the books there.

A. Why, of course we had a settlenent when we got through shipping and this was charged up to me.

At the time you had this settlement?

A. Not at the time.

What time?

A. At the time the check was given.

When you had that settlement?

A. I don't remember the date.

Who charged it up?

A. Sam. Curry.

Do you know?

A. Yes; I know.

Did you see him charge it?

A. I don't know as I just seen him charge it.

Didn't you just say a minute ago that you did not know whether it was charged up or not?

A. Of course I said it was charged up. I ain't around here stealing money for Bailey.

I ask you if you know when this was charged up.

A. It was charged up at the time.

At the time the check was drawn?

A. Of course it was.

How was it charged? How did Sam. Curry know anything about it—about this check?

A. Wasn't Sam. keeping the books at the time?

I don't know.

A. Of course he was.

When he drew it was he up there at the bank?

A. He was down at the hog yard.

You was up at the bank?

A. I was up at the bank.

When did it get charged onto the books?

A. Why, it got charged right at the time.

How did it come to get charged there?

A. He wrote it down, I suppose.

130 How did he know what to write down?

A. Couldn't I tell him? Doesn't he get the checks every 30 days?

I don't know.

A. What is the bank rules?

I don't know whether they got checks every 30 days or not.

A. We always did.

It wasn't charged up until the checks came back.

A. Yes, it was.

Do you know when?

A. I don't just remember the date; I don't remember the date.

It went on the check now?

A. It was charged up right at the time; of course it was.

Did you see the entry made?

A. I don't know as I just seen the entry made.

What was it charged in?

A. Why, in our books.
Dis you see the entry made by Sam. Curry?

Plaintiffs objects—gone over.

Did you ever see the entry?
A. I guess so.
Do you know?
A. Would I know what?
Do you know whether you saw that entry?
A. Why, of course I do.
Why don't you say so?
A. I do say.
You say that you saw it?
A. Yes, sir.
When did you see it?
A. That was in 1885, I guess.
At the time of the settlement, and that settlement was after this?
A. After this time.
About the time you drew the check?
A. Of course it was.
Now, you don't know whether the bank knew anything about where that check was charged?

131 A. The bank knew what check; this $500 check was charged; yes, of course they knew.

They knew what was charged up on your books down at the hog yards?

Plaintiff objects—immaterial.

Now, there was several Bailey & Bollong checks drawn to pay the interest on this $1,500 note, was there not?
A. Yes, sir.
That note when it was originally made, the proceeds was credited up to Bailey & Ballong?
A. That $1,500.

Plaintiff objects—improper recross-examination and already gone over, assuming a state of facts that don't exist.

A. There never was a dollar of that. It was to Bollong & Co.
The check that was drawn just prior to this $530 check was a check of Bailey & Bollong?

Plaintiff objects—improper recross-examination, already gone over. Sustained.
Witness excused.

H. C. BOLLONG (recalled):

(HODSDON:) I want to call your attention to this transaction of May 5th, 1884. Do you know whether at that time any other instrument was executed there at the bank or elsewhere concerning that transaction besides the note you have testified to?

Plaintiff objects as having been already gone over.

A. No; I don't remember of any.

Mr. Bollong, who composed this partnership of Bollong & Co.?

Plaintiff objects—incompetent, immaterial, improper cross-examination. Overruled.

A. We were running a business out at the farm at that time and one in here, and it was run that way for to keep them separate—with the feeding cattle at the farm—and run a hog yard in here.

132 The question is, who constituted the firm—what persons?

A. Why, it would be myself.

Any one else?

A. Sam. Curry kept books there and done the work. He did not put a dollar into the business.

Was that the firm of Bollong & Co.?

A. Yes, sir.

Who composed the firm of Bailey & Bollong?

Plaintiff objects—immaterial, incompetent, improper cross-examination. Overruled. Exception.

A. Bailey and Bollong—Bailey and myself.

What Bailey?

A. Crawford Bailey, out here.

(PHELPS:) When you say they composed the firm of Bollong & Co., do you mean that you yourself constituted that firm, or you and Sam. Curry constituted that firm?

A. Me and Sam. Curry.

Defendant objects—already answered. Overruled.

Witness excused.

(HODSDON:) We admit that the defendant was a national bank at the time of the happening of these transactions set out and described in the petition.

Plaintiff rests.

133 *Defendant's Testimony.*

C. E. SUMNER, called by defendant, sworn, testified as follows:

(HODSDON:) Mr. Sumner, where do you reside?

A. Schuyler.

Where were you residing in the year 1884?

A. In Schuyler.

What official position did you hold in the Schuyler National bank at that time?

A. I was president of the bank.

During what time?

A. Why, from the 16th of April until about the first of June of this year, 1889—16th of April, 1884.

You were president of said bank from April, 1884, when you have testified to, during that year?

A. Yes, sir; I was.

I will hand you this piece of paper, Mr. Sumner, and ask you in whose handwriting that is.

A. That is in my handwriting.

When did you make it?

A. On the 26th of May, 1884.

Where was it made?

A. It was made in the bank.

What bank?

A. In the Schuyler National bank.

Mr. Sumner, state with reference to what transaction that paper was made—paper No. 7.

(Hodson:) We will offer this in evidence.

You may state with reference to what transaction that was made—this slip.

A. It was made in connection with a loan we made Mr. Bollong of $1,500.

(Hodson:) This slip offered here in evidence refers to the 9th cause of action set out in the petition.

Now, Mr. Sumner, state with reference to that transaction your recollection.

A. My recollection is he borrowed $1,500 at 90 days, and
134 I discounced it $15 a month—one per cent. a month, $46.50—and paid him $30 in currency and gave him credit for $1,423.50.

Who was that credit given to?

A. Bollong & Co.

This slip there—how does it read at the head?

A. "Schuyler, Nebraska, May 26, 1884, for credit of Bollong & Co., proceeds of note, $1,453.50; less currency, $30; balance, $1,423.50, a credit to Bollong & Co."

How does this happen to read "Sumner & Co."?

Plaintiff objects—incompetent to bind the plaintiff.

Mr. Sumner, whom did the Schuyler National bank succeed?

A. The firm of Sumner & Co.

How is it that the name of Sumner & Co. appears on those slips?

A. When we organized the bank we had a lot of those blanks left, and we kept using them right along without changing the heading.

Cross-examination:

(Phelps:) Mr. Sumner, this shows a transaction between the Schuyler National bank and Bollong?

A. Yes, sir.

The dealing was bereen you and Bollong?

A. It seems so; yes.

This amount, $46.50, was really the amount of interest paid that time?

A. That was the amount taken out of the note.

It was no more than that?

A. No, sir.

I wish you would look at that endorsement and tell me what your opinion is as to when that was made (Exhibit No. 6).

A. When it was made?

Yes; when that endorsement was made?

135 A. My opinion is it was made the day the note is dated.

You had that kind of a stamp at that time, did you, Mr. Sumner?

A. Yes; we had.

You think that the fact that more than a legal rate of interest was contracted had anything to do with your transferring that note?

Defendant objects—incompetent, immaterial, irrelevant, calling for a conclusion from the witness.

State whether the fact that more than a legal rate of interest was bargained for in that transaction was the reason or one of the reasons why that note was transferred by the Schuyler National bank.

A. Why, I don't think it was *no* the reason. I am very sure that the note was endorsed on the day it was given, because Sumner Brothers' number appears in the corner here, and it will probably appear in their discount register under that date.

If that is so, the bank borrowed the money of Sumner Brothers to loan; is that the way of it?

A. Well, the note is taken in favor of the bank. My impression is that Sumner Brothers' money was used to pay Bollong & Co. the proceeds of it.

Was this the way of it? Now, when the bank might be a little short, then the bank borrowed Sumner Brothers' money and loaned it to their customers; is that the way of it?

A. Well, I don't know that that was it. Sumner Brothers at the time had some money that they kept loaned out, and when they had a certain amount of money my recollection is that they invested it in these notes.

Now, the transactions were by the bank, so far as lending?

A. The note was taken on a blank to the bank and then

136 endorsed to Sumner Brothers; did that in several cases.

I will call your attention to this Exhibit No. 3; is that a like transaction with Exhibit No. 6?

A. Well, I think this note was taken in favor of the bank and was the property of the bank, is my opinion of this; of course I didn't say anything in regard to this of my own knowledge, but it has got the bank number on it and there is no endorsement.

Now, with reference to Exhibit No. 4.

A. Well, that is in the same situation as the first one you showed me.

And that is a note where the bank officers and the bank in its regular course of business loaned money to Mr. Bollong, is it not?

A. Well, this note, you understand, is in my brother's writing all

through; I don't recollect anything about it of my own knowledge, of course; my judgment is that he loaned him $1,000 of Sumner Brothers' money, taking a note in favor of the bank and endorsing it without recourse.

When Sumner Brothers had money on hand it was the custom of the bank to take that money and loan it?

A. Yes, sir.

And charge it to the bank and give Sumner Brothers credit?

A. Yes, sir; charged it to Sumner Brothers, gave Bollong & Co. credit for it, or else pay them the money on it.

Witness excused.

WILLIAM H. SUMNER, called by defendant, sworn, testified as follows:

(HODSDON:) Mr. Sumner, where do you reside?

A. Schuyler.

What official possition did you hold in the Schuyler National bank?

A. I am president at present.

137 What other office have you held in that institution?

A. Cashier.

How long were you cashier?

A. From the first of September, 1884, until about the first of June, 1889.

I want to call your attention to the 7th cause of action alleged in the plaintiff's petition with reference to a transaction with the bank on the 5th day of May, 1884, wherein the plaintiff alleges that he borrowed $2,600. I want to inquire of you what documents you have in your possession relative to that transaction.

A. I have the discount register there that shows the original entry of the note, and I also have some cancelled certificates of deposit showing how the proceeds of the note were disposed of.

Could you identify the register?

A. Yes, sir.

Is that the one?

A. Yes; May 5, 1884.

Yes?

A. Yes; that is the one; there is the original entry.

Those entries were not made by you?

A. No, sir.

You were not here?

A. No, sir.

Made by Crewitt?

A. No; those were made by the book-keeper.

By whom were those entries made?

A. By J. M. Simmons.

What position did he hold?

A. He was book-keeper in the bank.

When were those entries made in the book? What is the usual course of business?

A. As the loans are made the notes are entered in this register—the date the loans are made.

Will you point out that entry?

A. Right there, No. 65160.

What is that number 65160?

A. That is our number of the note.

That is the bank's number?

A. The bank's number.

138 (PHELPS:) That is the original $2,600 borrowing, May, 1884.

(HODSDON:) We offer this entry.

Objected to as incompetent to bind defendant (plaintiff).

(COURT:) The evidence may go in for what it is worth.

Plaintiff excepts.

You may read that entry to the reporter:

"A. May 5, '84; #65160; (maker) Neil Bollong; (endorser) H. C. Bollong; c. m. (means chattel mortgage); (where payable) this bank; (time) 90 days; (when discounted) May 5, 1884; when due, August 6, 1884; (amount) $2,600; (amount of discount) $80.60; (amount paid) $2,600; (when paid) August 6th; (amounts protest) pro.; (amounts renewed) ren'd."

Have you any other documents in your possession relating to that transaction?

A. Yes, sir.

(Witness produces notes—papers.)

Do you know whose signatures are attached to those papers—papers Nos. 8 and 9?

A. Yes; Mr. Crewitt, cashier at that time.

Do you know Mr. Crewitt?

A. I did know him; yes.

Is he living?

A. No, sir.

Are those his signatures?

A. Yes, sir.

In what capacity?

A. Cashier of the Schuyler National bank.

Defendant offers papers No. 8 and 9 in evidence.

Plaintiff objects—incompetent to bind the defendant.

(COURT:) What are they?

(HODSDON:) They are certificates of deposit.

Mr. Sumner, was there any other transaction between the Schuyler National bank and Neil Bollong or Hector C. Bollong on the 5th day of May, 1884?

139 Plaintiff objects, as the witness is incompetent to show. He wasn't in the State of Nebraska, Colfax county and city of Schuyler, on that day.

Mr. Sumner, have you examined the books of the bank in relation to the transaction of this 5th day of May, 1884?

A. I have; yes, sir.

State whether, as shown by this, there was any other transaction with Neil Bollong or H. C. Bollong, on the 5th day of May, 1884, other than the one I have called your attention to, stated in the 7th cause of action in the petition here.

Plaintiff objects—incompetent, not the best evidence, immaterial, not the best evidence as to the facts. Sustained.

Mr. Sumner, I will ask you whether Mr. Crewitt, who signed these certificates of deposit, is now living.

A. I answered that.

I have asked you if you made the examination of the books with reference to these dates. Have you examined these books with relation to the transactions occurring between the bank and Neil Bollong and Hector C. Bollong on the 5th day of May, 1884?

A. I have.

State whether you find on the books of said bank any other transaction than the one to which your attention has been called and stated in the 7th cause of action in the plaintiff's petition.

Plaintiff objects—incompetent, immaterial, not the best evidence.

I will ask you, Mr. Sumner, whether you have examined all of the books of the bank in relation to that kept at that time, calling your attention to this 5th day of May, 1884.

A. All books kept in relation to this loan?

140 Yes.

A. I have examined the books of original entry, where they would be entered first. I have not examined other books that they might be entered in afterwards.

What other books are those?

A. Oh, ledger account.

You say you have examined all the original books of entry?

A. Yes, sir.

How carefully? State to the court fully.

A. I examined them very carefully, so as to be very positive as to the nature of the transactions. I was not present at the time it was carried out.

Have you examined every entry in the books of original entry of the bank made upon that day?

A. Every original entry made on that day?

Yes.

A. With all parties?

Yes.

A. No, sir.

Not with all parties?

A. Not with everybody. I examined all the original entries made with Neil Bollong and H. C. Bollong. I didn't think it necessary to examine "John Smith."

Have you examined all that related to the Bollongs on that day?

A. Most assuredly.

Now, I will ask you to state whether or not there is as a matter of fact any other transaction than the one to which your attention has been called here occurring on the 5th day of May and stated in the plaintiff's 7th cause of action in the petition.

Plaintiff objects—incompetent, immaterial, not the best evidence and the entry might have been made in some one of the other books referred to. Overruled. Exception.

141 A. I find no record of anything else except in relation to this loan.

What loan?

A. Loan of $2,600.

Are you acquainted with the signature of Neil Bollong?

A. Yes.

And H. C. Bollong?

A. Yes.

That their signatures on the back (handing witness paper)?

A. I should say it was; yes, sir.

Defendant offers papers No. 8 and 9 in evidence.

Plaintiff objects—incompetent, immaterial to bind the plaintiff. Overruled. Exception.

Mr. Sumner, as shown by the books of the bank, what became of that note?

Plaintiff objects—not the best evidence to bind the plaintiff. Overruled. Exception.

Have you examined the books with reference to that?

A. With reference to that note and the history of it, yes, sir.

What was done with reference to it?

Plaintiff objects—not the best evidence.

Mr. Sumner, that book you have there, please state what it is.

A. Discount register of Schuyler National bank.

What entries are required to be made in that register?

A. A history of each note discounted; each loan made.

When is that entry made?

A. The day the loan is made; the day the note is entered up.

How near with reference to the time of the transaction?

A. Why, whenever the proceeds of the note are paid or
142 credited to a party we call that the time the loan is made, and the notes are entered the same day.

Done right at or near the time?

A. That day.

Is that the fact with relation to all of these books here?

A. Yes.

Do those books exhibit the dealings of the bank with parties generally?

A. This book is a record of loans made simply. The cash books or journals there are records of notes paid, deposits made, checks

paid, and new loans made; regular cash book, all moneys received and paid out, whether on account or loans.

Do those exhibit the dealings of the bank with its customers generally?

A. Yes.

And you have testified that those were all made at or near the time of the occurrence of the transaction?

A. Made daily as the business proceeds.

Now, I will ask you to turn to the book that you have there. What book is that?

A. This? Discount register.

Of what institution?

A. Schuyler National bank.

Now, I will ask you to turn to that and ascertain what became of this note when it became due.

A. It was renewed.

When was it?

Plaintiff objects—incompetent.

(COURT:) Do you personally know?

A. Not this first renewal.

Now, turn to the following; when was that renewed?

Objected to.

COURT: Let him repeat what is on the book.

A. The books show that on August 6th, 1884.

Object to this.

143 COURT: Read the entry.

A. Date, August 6th; No. 65658; signed by Neil Bollong, endorsed by H. C. Bollong; payable 90 days after date; discounted August 6th, due November 4th and 7th; amount, $2,600; discount, $80.60; amount paid, $2,600; when paid, November 8th; "R." That signifies renewed.

Plaintiff objects—incompetent, immaterial, not referring to any transaction mentioned or described in the petition. Overruled.

(PHELPS:) We admit that it was renewed from time to time down to June 19.

Turn to June 19, 1885.

A. On June 19 there was $1,850 paid on this $2,600 note.

(PHELPS:) You are speaking from your recollection of that?

A. I am speaking from the books. I was there; yes; but I don't recollect personally whether it was paid to me or who it was paid to. I am speaking from the books. The books show there was so much paid and show a check whereby it was paid.

By whose check?

A. N. R. Bollong.

That was paid on what?

A. On the $2,600 note of Neil Bollong.

What does it now show with reference to the balance?

A. It shows that a balance, $750, — paid on the 20th of June by H. C. Bollong.

Mr. Sumner, I want to ask you whether at that time that note was paid, as you have testified, whether the same was overdue or not.

A. It was due June 16th; 2 or 3 days overdue.

Will you turn to the register there and ascertain when the last renewal was prior to that?

144 A. The date of this note paid June 19?

Yes.

A. Dated May 14, 1885.

When was the note dated which that renewed?

A. The date of the note which that renewed was April 11th, 1885.

For how long was that to run?

A. 30 days.

Can you ascertain also the date of the note which that one of April 11th renewed?

A. February 7th, 1885.

Now, starting with February 7th, state how long that note given on February 7th was to run.

A. 60 days.

(PHELPS:) What was that note?

(HODSDON:) This $2,600 note.

That was renewed in February for 60 days?

A. Yes.

The date of the next note?

A. April 11th.

For how long?

A. 30 days.

The date of the next one?

A. May 14, 1885; 30 days.

And finally paid?

A. June 19 and 20th.

Mr. Sumner, I want to call your attention to the note that has been offered in evidence on the part of the plaintiff, stated in the 17th cause of action in this petition—those two notes; I want you to examine those notes, Mr. Sumner, and state fully the whole transaction in connection therewith. (Causes 17 & 18.)

A. This loan of $500, December 8, 1885, was made by Sumner Brothers.

To whom?

A. To H. C. and Neil Bollong, on this $500 note here, marked Exhibit No. 1. The note is payable to the Schuyler National bank, endorsed without recourse, and there is the check that Sumner Brothers gave for the note on December 8, 1885.

Check made at that time?

A. Made at that time; paid at that time to their account on the bank book.

(PHELPS examines witness:)

145 (PHELPS:) Mr. Sumner, that was never delivered, was it, to Bollong?

A. I don't know whether it was or not.

Isn't this about the way this occurred: You paid him out the money, but made this check by Sumner Brothers payable to Bollong or bearer; didn't that occur in about that way? The loan was made, terms determined upon, the note of that date, December 8, 1885, for $500 made, executed, and delivered by Bollong to you, and you paid him out the money, and then in order to keep the account straight between Sumner Brothers and the bank you made this check from Sumner Brothers to Bollong or bearer and placed upon the files without delivering it or without its having been so delivered to Mr. Bollong at all?

A. I don't know, but I will have to ask you to read that over again. I can tell you just how this occurred. Mr. Bollong had come in to borrow some money and I would loan it to him, either in my capacity as cashier of the bank or member of the firm of Sumner Brothers; sometimes one capacity and sometimes another. If I loaned him Sumner Brothers' money I gave him Sumner Brothers' check and charged up the proceeds. I did not suppose it made any difference to him as long as he got it.

I want to know if that ain't about the way it occurred.

A. Yes, sir; I presume it was.

Plaintiff objects as incompetent to bind the plaintiff, immaterial. Overruled. Exception.

(HODSDON proceeds with examination:)

Now, Mr. Sumner, while that matter is up I want to inquire of you to whom the interest was paid upon that loan on that day, if any was paid.

146 A. Why, to Sumner Brothers. This check shows that Sumner Brothers paid $491.75 to Mr. Bollong for note $500 for 80 days; retained $8.25.

State whether any discount of that note went into the fund of the bank.

A. No, sir.

Then or at any other time?

A. No, sir.

(HODSON:) I offer paper No. 10 in evidence.

I will ask you to state with reference to the other $600 note; state the whole transaction in relation to the 18th cause of action.

A. Loan made by Sumner Brothers to H. C. Bollong, $600, 90 days, for which they gave their check, $572.10, in the same manner as the last testified to; there is the check.

What was that date?

A. January 12, 1886. It was closed up on the note due January 9th.

State to whom the interest was paid upon that loan.
A. The interest was retained by Sumner Brothers, as shown by this.
State to whose account the funds were placed.
A. Sumner Brothers got the interest; nobody else ever got any of it.
Did the bank receive any of it then or any other time?
A. No, sir; that is another check, $572.10.
Is that check for the proceeds of the $600 note stated in the 18th cause of action?
A. Yes, sir.

Defendant offers paper No. 11 in evidence.
Plaintiff objects—incompetent, immaterial. Overruled. Exception.

I want to call your attention to that note dated April 12, 1886.
A. This was a loan made by the Schuyler National bank to H. C. and Neil Bollong, April 12, 1886, for 30 days, $700.
That transaction was had with the bank?
A. Yes, sir.
147 Now, coming down to the 21st cause of action, a $1,000 note, I will call your attention to that note. Mr. Sumner, state the facts fully with reference to the loan and negotiation connected with said note.
A. That was a loan made by Sumner Brothers on November 7th, 1885, 30 days, to H. C. and Neil Bollong, for which they gave this check—$983.50.
Who received the proceeds or the discount from that note, I should say?
A. Sumner Brothers. It was retained out of the note.
Did the Schuyler National bank ever receive any part of it?

Plaintiff objects—leading.

State whether the Schuyler National bank at any other time received any portion of the discount of that note.
A. They did not.
State whether that note was ever the property of the Schuyler National bank.
A. No, sir.

(HODSDON:) We offer this check, dated November 7, 1885, being paper No. 12, in evidence.

Plaintiff objects—incompetent, immaterial. Overruled.

What became of that $1,000 note, Mr. Sumner?
A. On December 10, I think, 1885, we reloaned it or renewed it for 90 days; gave another check for $953.50, the proceeds of the new 90-day $1,000 note.
Who received the payment upon that last December 10, 1885?
A. Sumner Brothers.
State whether the Schuyler National bank then or at any other

time ever received any discount taken upon said loan made on December —, 1885.

A. They did not.

To whom was that discount paid?

A. Sumner Brothers.

148 Has the Schuyler National bank ever received any of it since?

A. No, sir.

Defendant offers check, dated December 10, 1885, being paper No. 13, in evidence.

Plaintiff objects—incompetent, immaterial. Overruled.

Do you know what became of that note afterwards?

A. I think on March — the bank loaned H. C. and Neil Bollong $1,000 to take that up with or renew it.

Sumner Brothers had no further connection with that?

A. No.

I want to call your attention to the 26th cause of action, being a note for $300, dated February 15th, 1886.

A. That was a loan made by Sumner Brothers to H. C. Bollong, $300, 90 days, for which they gave that check—$286.05.

To whom was the discount paid?

A. Sumner Brothers. Schuyler National bank never received a particle of it.

That note ever the property of the Schuyler National bank?

A. No.

Defendant offers check, dated February 15, 1886, being paper 14, in evidence.

Plaintiff objects—immaterial, incompetent. Overruled.

I want to come down to that note given on the 4th of October, 1886. Note given on that day was for how much?

Plaintiff objects. Those books are not the best evidence.

A. There was a settlement on that day that Mr. C. E. Sumner, president of the bank, made himself.

Do you know what became of that note that was given on that day—the note given on October 4?

A. $1,435 note?

Yes.

A. Yes; I know what became of it.

149 What became of it?

A. I sold it.

To whom?

A. Wm. Wallace, of Omaha.

When did you sell it?

A. December 28, 1885, or 1886—yes, 1886.

When was it paid, if you know?

A. It was paid in two payments. There was $435 paid January 5th, and the balance was paid on January 21, 1887.

To whom was the amount paid and remitted to.

A. Remitted to William Wallance; the proceeds of the note was remitted to William Wallance. The note was sent to William Wallace before that and sent up for collection.

Cross-examination:

PHELPS: Now, going back to the transaction of May 5, 1884, when the $2,600 note was made, executed, and delivered by Neil Bollong, endorsed by the plaintiff, I wish to call your attention to paper No. 15 and ask you what you know, if anything, with reference to that paper being the chattel mortgage referred to in your testimony as given to secure that note.

A. I have no knowledge of this mortgage except what is on the books; this purports to be a mortgage given by Neil Bollong to the Schuyler National Bank securing the note of $2,600.

Dated when?

A. The 5th day of May, 1884.

Whose handwriting is that?

A. That is in Mr. Crewitt's writing.

Mr. Crewitt at the time was cashier of the bank, was he not?

A. Yes, sir.

150 Your books, you have said, show no other transaction between the bank and him on that day?

A. The notes show no business with him except the entry of this note and payment for it; the record of the note shows the chattel mortgage.

Plaintiff offers Exhibit No. 15 in evidence. (No objection.)

Now, referring to a transaction, June 19, 1885, wherein you say Neil Bollong paid $1,850 and shortly after paid $750.

A. N. R. Bollong is the evidence.

Now, I will ask you if it is not the fact that at the time, and for a time prior thereto and subsequent as well, H. C. Bollong or the bank was holding the note of H. C. Bollong in renewal of former notes in the amount of $1,500.

A. You want to know whether at the time this $750 was paid we had a note against H. C. Bollong, $1,500?

Yes.

A. I can't tell without referring to the books.

You don't know as a matter of fact that you did not have?

A. No; I would not say we did not have.

Now, I will ask you if it is not true that that money paid on that day on account of Neil R. Bollong was not money that you collected on a collateral note to secure Neil R.'s debt to the bank belonging to H. C. Bollong—that is, this $1,850 and the $750 payment.

A. Our books showed that we loaned Neil R. Bollong $2,000 the day he paid that $1,850, so I don't think we collected any collateral.

Then your testimony with reference to the payment of the $2,600 was a payment of Neil R. Bollong's indebtedness?

A. No; payment of $2,600.

151 This $1,850?

A. My recollection of this $1,850 payment of N. R. Bollong's

is that N. R. Bollong bought some cattle of Neil Bollong in this mortgage; instead of paying Neil Bollong he paid it on the note secured by the mortgage. That is my recollection of it.

Now, going back to April, 1885, the transaction of the renewal of the $2,600 note. Please state what day that was on.

A. I testified to the date of that note here. The books show April 16, 1885. The note dated April 11th for 30 days.

A note from whom?

A. From Neil Bollong. Neil Bollong is maker and H. C. Bollong is endorser.

What is the amount of that?

A. $2,600.

Now, on that day what was the amount of interest paid?

A. $35.75.

To the admission of any evidence as to any loaning or contracting for a loan or payment of interest on April 16, 1885, we object on the ground—incompetent, immaterial, irrelevant, barred by the statute of limitations, and no claim made for it in the petition. Overruled. Exception by defendant.

For what length of time was that?

A. 30 days.

On what amount?

A. $2,600.

At what rate of interest was that?

A. I should think about one and one-fourth a month. I haven't figured it.

When was that note renewed again?

A. On May 21 by a note dated May 14, the time of the maturity of the old one.

What was the amount of interest, if any, paid at that time?

To the admission of any evidence as to interest paid on the date inquired of in the question propounded to the witness de-
152 fendant objects—immaterial, irrelevant, and incompetent, barred by the statute of limitations, no claim made for it in the petition, improper cross-examination. Overruled. Exception.

A. $35.75.

For what length of time?

A. 30 days.

At what rate was that?

A. I will have to figure.

Well, as near as you can?

A. 15 %.

Now, when was that renewed?

A. It was not renewed.

Now, referring to the transaction of the borrowing, I think, of $500 in the 17th cause of action; the borrowing of the $600 on the 12th day of January, 1886; that is the 18th cause of action. Now, I will ask you the amount retained out of the $600 as interest. What was it?

Defendant objects as already testified to. Overruled.

A. The amount of interest retained is $27.90.

Upon what sum of money?

A. $600.

For what length of time?

A. 90 days.

At what rate of interest was that?

A. 18 %.

When was that renewed?

A. It was paid—renewed by the bank. It was not renewed by Sumner Brothers.

At what time?

A. April 17, 1886.

Now, at the time this $600 note was given, isn't it true that that was the renewal of a note for $500 and the addition of $100 to the original $500.

A. Why, yes; you might call it a renewal or he paid the $500 out of the proceeds of the $600. There was a check given *given* for the proceeds of the $600. I presume the difference between the $500 note and the $600—the $100 less the discount.

153 The $100 less the discount?

A. Yes, sir.

When the $500 note came due he came there desiring to renew it and renew for $600, and you made a new note for $600 and paid him the difference between $500 and $600 less the discount?

A. I presume that is the way of it.

That former note—what was the amount retained when that was given?

A. The $500 note?

Yes.

A. $8.25.

For what length of time?

A. 30 days.

At what rate of interest?

A. 18 %.

Now, with reference to the transaction on November 7, 1885, when the plaintiff borrowed $1,000, which was renewed December 22, 1885, December 10, what was the rate of interest charged on the first note on the renewal?

A. 18 %.

Now, in these two transactions, as also in the transactions with reference to the $500 and the $600 note, I will ask you whether or not the transactions were not between the plaintiff and you or the president of the bank.

A. The transactions were with one of us, sure. Nobody except my brother or myself could have given Sumner Brothers checks.

And it was done at the bank?

A. I presume so.

Over the counter?

A. Yes.

In the regular course of the business of the bank?

A. Might have been in business hours or might have been afterwards. Sometimes after the bank was closed we had Mr. Bollong around there and did business with him—that is, after the outside doors were closed.

Done the same as the bank did its business, at any rate?

A. Oh, yes; certainly.

154 Now, in loaning this money of Sumner Brothers nothing was said to Bollong about your loaning Sumner & Co.'s money?

A. I don't think there was.

The transaction, so far as that was concerned—there was no more said and nothing different said than there would be if you were loaning the bank's money or any other people's whom they loaned for?

—. ——.

Now, the transaction of the sale, as you say, of the note for $1,435—was that it?

A. Yes, sir.

On December 28, 1886—how long was that before that note by its terms was due and payable?

A. 8 days.

Now, that note was endorsed, you say, to William Wallace?

A. Yes.

Now, Mr. Sumner, I will ask you whether or not the fact that more than 10 per cent. interest having been contracted for and paid by Bollong on that note had anything to do whatever or was any reason in any way for a transfer of that note by you to Wallace.

Defendant objects—incompetent, immaterial, irrelevant. Overruled.

A. I presume that had a little tendency.

Now, with reference to the note for $300, dated February 15, 1886, being note marked Exhibit 6—that note, if we understand you right, is the property of Sumner & Co.?

A. That note was the property of Sumner Brothers. It is paid now.

Well, it was. Now, on that was a certain endorsement—at what time?

A. May 19, 1886.

Now, I will ask you if it is not a fact that the balance of $50 mentioned in the fact of that note did not go into a note for

155 $1,150, made due and payable, and which was the property of the Schuyler National bank.

A. I don't know, sir; my book shows that that $50 was paid June 16th. I think there was $1,150 note given about that time, it seems to me. June 16th, 1886, there was $1,150 note given. No; it was not either, I guess. On June 16 there was an $1,150 note brought in, dated May 15th.

Now, Mr. Sumner, any means of knowing when paper No. 16 was in fact executed? Of course, it shows itself the date.

A. No; my books show that it was brought into the bank June 16th.

And that would be the date that it was actually delivered to the bank?

A. Yes; I think that is the one. Yes; June 16, 1886.

Now, isn't it true that on June 16 overdue interest was rec-oned? Isn't it a fact this note was dated back for the purpose of covering the interest past due for the time that had expired between the payment of the $250 and the $300 note and other transactions—other items of indebtedness, $1,150—and the delivery of this $1,150 note?

A. I think there was a $700 note and the $400 note.

$650?

A. $700 note was given April 12 at 30 days. That would make it due May 15, and that was renewed on June 16. That is the note; the new note was brought in on June 16.

And dated back?

A. I presume so; that is the way I have it.

Was there not included in the renewal of the $700 note given in April and due May 15 also an amouut due upon a $400 note and the balance of this $300 note after the deduction of the $250 paid on the 15th of May?

A. I have no way of telling whether that $50 balance on
156 that $300 note was included in this $1,150 note or was paid. Our books show $50 credit to Sumner Brothers that day.

16th day of June?

A. Yes, sir.

That is the same day this note?

A. The same day this note came in.

Plaintiff offers that in evidence.

Do you know anything about the settlement made on the 4th of October, 1886, aside from what the books show in the marshalling of the several items of indebtedness to the payment of a portion and the giving of the note anew? Do you know anything about it of your own knowledge aside from the books?

A. No; I did not make the settlement—made by my brother—and I think Mr. Hodsdon, I think, had the claims trying to get them settled.

Mr. Sumner, in speaking of payments made I will ask you if you did not call or did not have reference in some of the statements you have made about payments, the payment of the note by the making of a new one, taking it up at the time the new note for the same old debt was given.

Defendant objects. Overruled. Exception.

A. Why, I think when a man gives a $600 note and takes a $500 note that is due at the time and takes the balance money that he pays the $500 note; that is the way I understand it.

Calling your attention to that particular transaction, the note made for $500 which came due on or about January 12, 1886, when the plaintiff came to the bank and gave a $600 note, receiving the

difference between the $500 that he already owed and the $600 note less the discount, now I ask you if that you call a payment of the $500 note.

A. Yes, sir.

157 Now, whenever a note was renewed and a new sum found by the payment of a portion of it or by the including of other items of indebtedness you call that a payment of the note past due, the note that day due and taken up and cancelled?

A. Yes, sir.

And whenever a note was delivered up by the bank and a new one taken for it and the note delivered by cancelling and marking "paid," you call that a payment of the note?

A. No; that is a different thing.

Take, for instance, the $50 on the 16th day of June, 1886, upon the $300 note, $250 of which had been paid on the 15th of May, including also the item of the $400 note past due, and a $700 note past due, where a new note for $1,150 was given. Now, I will ask you if you call the transaction by which those notes—I will ask you if you call that a payment of the $50 balance and a payment of the $400 note and a payment of the $700 note.

Defendant objects—immaterial, irrelevant, incompetent. Overruled. Exception.

A. I call it a payment when a man has 2 or 3 notes—I call that $1,150 note, if it was given for three different past-due notes—I don't say it was—if it was, I call it a payment of those three notes. It is a new loan.

The same rule would apply to a transaction of loaning and renewing notes where Sumner Brothers' money was loaned?

Defendant objects—incompetent, immaterial, irrelevant. Overruled. Exception.

A. Why, yes; if Sumner Brothers owned a note and a man goes to the bank and borrows money to pay it with I call that a payment, certainly.

158 Mr. Sumner, calling your attention to a note for $1,500 of date April 26, 1886, and by the way I have it marked paper No. 17, I will ask you if the same was not included in a settlement between the bank and the plaintiff on the 4th or 5th of October, 1886.

A. Yes.

(PHELPS:) We offer this in evidence (Exhibit No. 17).

No objection.

Now, I will ask you if that note was not one of a series of renewal notes for the same amount running back to June 19, 1885.

A. I think it was.

Redirect examination:

HODSDON: Now, Mr. Sumner, going back to the 19th day of June,

and state if you know anything about the execution of the first note of that series.

A. Why, on June 19 H. C. Bollong and Neil Bollong borrowed $1,500, and they paid the balance of that $2,600 note and the $2,000 note out of the proceeds.

How much had been paid on that $2,600 note?

A. $1,850.

When was that paid?

A. On the 19th of June.

By whom was that paid?

A. By N. R. Bollong.

Now, I want to call your attention to this Wallace note. I ask you when did you say you sold that note to Mr. Wallace?

A. On the 28th of December.

For how much did you sell it?

A. I don't remember; something less than the face.

Can you tell pretty nearly?

Plaintiff objects—immaterial what he sold it for. Overruled.

A. I think for the face, less the interest at 10 % for the time it had to run.

159 State, when that note was collected, how much was paid over to Mr. Wallace.

A. It was all paid over.

Plaintiff objects—immaterial, incompetent. Overruled. Exception.

Recross-examination:

PHELPS: You say these payments made on that $1,850 on that date, on the $2,600, were made with certain drafts that Neil R. Bollong had made payable to him?

A. His check on the Schuyler National bank.

Didn't he bring back certain checks there, drafts that he had received for cattle in Chicago? I think I understood you to that effect.

A. No.

Witness excused.

H. C. BOLLONG (recalled):

HODSDON: Is Neil Bollong, your father, now living?

A. Senior; yes, sir.

Is Neil R.?

A. Is Neil R. what?

Is he now living?

A. Yes, sir; was a few minutes ago.

Thomas L. Palmer?

A. Yes, sir.

Witness excused.

HODSDON: We offer this certified copy of the opinion of the Supreme Court in this case.

(No objection.) Exhibit 18.

Defendant offers copy of original petition filed here as
160 Exhibit 19; also the filing thereon. It is agreed that summons was issued on the 19th day of March, 1887, on this petition filed on that day.

It is admitted that the amended petition upon which this trial is now proceeding was filed on the 11th day of January, 1889, and that the original petition was filed March 19, 1887, upon which summons was issued in the case.

Rebuttal Testimony.

(BOLLONG recalled :)

PHELPS: Now, Mr. Bollong, it is said here that $1,850 of your debt of $26 were paid by Neil R. on or about June 19, 1885. Now state to the court in what payments were made and how and under what arrangement and for whom Neil R. paid the money alleged to have been paid that day.

Defendant objects—incompetent, immaterial, irrelevant, no such arrangement being competent to bind the defendant; that such arrangement is not competent to bind the defendant. Overruled. Exception.

A. In the fall of 1884 I sold him some cattle and he gave me his note and he paid it about that time, about June 19, 1885, and Mr. Sumner has it one way and I would—he says the $1,800 was put in in this $2,600 note, but at the same time I gave a note for $1,500.

This payment made by Neil; whose money was it he was paying?

A. Mine.

Defendant objects—immaterial. Overruled. Exception.

Now, I will ask you with reference to any acts on the part of your father, Neil Bollong, Thomas Palmer, or your brother, Neil R. Bollong, any acts of others in and about signing, executing as
161 security or otherwise, or anything that they did, did they do such acts other than as sureties or agents for you?

Defendant objects—leading. Sustained.

It is said here that Neil Bollong, your father, executed a note Now, I will ask you what interest, if any, he had in the money that was obtained from the Schuyler National bank on that note?

Defendant objects—incompetent, immaterial, irrelevant, not the best evidence; the contract that they executed between the parties is the best evidence. Overruled. Exception.

A. Not any; he was only my surety.

State whether his acts in that regard or in regard to that note or any subsequent note for your indebtedness there were for any other

purposes than that of assisting you in obtaining money from the Schuyler National bank.

Defendant objects—leading. Sustained.

State what object there was, if any, in your father's executing and making the note payable to you and the endorsement by you to the bank—the note of May 5, 1884, being the $2,600 note.

Defendant objects—incompetent, immaterial, irrelevant. Overruled.

A. The bank wanted it done that way; the cashier of the bank.
Who was the money for?
A. For me.

Defendant objects—immaterial, irrelevant, incompetent. Overruled. Exception.

Is the same true with reference to the second note?

Defendant objects—immaterial, irrelevant, incompetent, calling for a conclusion from the witness. Overruled. Exception.

A. Which do you call the second note, the $1,500 note?
The renewal of the $2,600 note.
A. Yes, sir.
162 Now, did Thomas Palmer sign certain of your notes?
A. Yes, sir.
What interest had he in them?

Defendant objects—immaterial, irrelevant, incompetent. Overruled.

A. Not any—any more than a surety.
How came he to be asked to sign as surety?

Defendant objects—immaterial, irrelevant, incompetent. Overruled.

A. The bank always wanted generally two signers on the note; sometimes three if it was a big note.

Cross-examination:

This $1,800 that Neil R. paid on the $2,600 note on the 19th day of June he paid — his check, did he?
A. My note was in the bank at the time.
I ask you if he paid it by his check.
A. I don't know whether he paid it by his check or whether it was Chicago drafts. He came back from Chicago.
He paid it out of his funds?
A. I suppose he did; I suppose he had a credit at the bank or he couldn't have paid it.
Who was this Neil R.?
A. Neil R.
After he had paid $1,800 what became of the balance of it?
A. The balance of what?
Of the note.

Plaintiff objects—improper cross-examination. Sustained. Exception.

Did you pay anything on that note that day or the following day?

Plaintiff objects—improper cross-examination. Overruled.

163 A. I gave a new note of $1,500.

On which note, the $2,600 note? Did you on the 19th day of June or on the 20 of June, 1885, pay anything on the $2,600 note after Neil R. had paid the $1,800?

A. Why, I just say—I said before I renewed a note or gave a new note.

Renewed what?

A. Gave a note of $1,500.

Didn't I ask you if you paid anything on that $2,600 note on the 20th day of June, 1885?

A. I don't know whether you would call it paid by giving a new note.

Neil R. paid $1,800, didn't he?

A. What on?

On that note.

A. I don't know. He paid 1,800 and some dollars into the bank that day for me.

You don't know whether it applied on this note or something else?

A. I don't know as it applied on that particular note.

It applied to the extent of $1,850 upon your indebtedness there?

A. Certainly.

You don't know whether it applied on this $2,600 note or some other note?

A. I don't know.

Do you know whether this renewal you tell about applied on that note or some other note?

A. I know about the same time I renewed the $1,500 note.

Don't you know the same day that you gave a note for $1,500?

A. Yes, sir; I know I did.

You signed it and your father signed it?

A. Yes.

And that $2,600 note was taken up at that time, wasn't it?

A. I guess it was at the time the $1,500 note was given.

Now, all these notes that your attention has been called to were executed by yourself, your father, and Thomas L. Palmer

164 except in one instance?

Plaintiff objects—improper cross-examination of the testimony on rebuttal.

Redirect examination:

(PHELPS:) I want to show a transaction on that day in their own figures. I will ask you what that book is.

A. Schuyler bank account book.

Of the book between whom?

A. Between the Schuyler National bank and myself.

I will ask you whose entries those are made here bearing date of June 20, 1885.

A. It looks like Mr. Charley Sumner's.

Where were those entries made?

A. In the Schuyler National bank.

By whom?

A. By some one in there—the cashier or some one.

I wish to offer so much of this pass book in evidence as shows the amount checked out of that bank on the 20th day of June or charged that day, 1885, being one for $46.50, another for $950, and one for $100, and I will ask the witness to state to whom these payments represented by these three checks were made.

Defendant objects—incompetent, immaterial, irrelevant, and, further, that it is not shown to be a book competent and admissible under the statute, and, furthermore, it is not identified with this transaction. Overruled. Exception.

A. There is two there—the $100. I don't know at present without looking up my check stubs, but the $950 and the $46.50
165 were to the Schuyler National bank.

Now we offer that in evidence—those three items.

Defendant objects on the ground of the last objection stated. Overruled. Exception.

The same is as follows:

"June 20, by c'k, $46.50.
" " $950.00."

Recross-examination:

(HODSDON:) That item of $950—what was that for?

A. That same day I gave a note, and that went to pay on the other note.

Didn't you pay out of that $950 check—didn't that apply to take up the balance on that $2,600 note—to pay a note of yourself and John Curry of $200 at the bank?

A. I expect so.

Is it so?

A. The same date I gave a note of $1,500.

Now I am asking you about that. Is that so?

A. I think it is.

$750—that check—applied to take up the balance of the $2,600 note, and the other $200 to pay that note of yourself and John Curry; that the way of it?

A. I think so.

Do you know?

A. It is to the best of my recollection. I gave a note of $1,500 the same day to pay this other note with.

You say you don't know what the $100 is for?

A. I say I don't know just at present without looking. I gave a $1,500 note the same day and then checked over to pay off the old note.

That was about the 20th of June?

A. Somewhere about that; the 19th or 20th.

Plaintiff rests. Case closed.

166 STATE OF NEBRASKA, } ss:
Dodge County, }

I, Edwin R. Mockett, one of the stenographic reporters in and for the fourth judicial district of Nebraska, do hereby certify that the above and foregoing is a true, full, and correct copy of all the evidence and testimony introduced on the trial of the above-entitled cause, together with the objections of the parties to the introduction thereof, the rulings of the court thereon, and the exceptions of the said parties thereto by them noted. Exhibits attached hereto.

EDWIN R. MOCKETT,
Reporter, Fourth District.

The foregoing is all the evidence offered or given by either party on the trial of the case, and, on application of the defendant and by the agreement of parties hereto, this bill of exceptions is allowed by me and ordered to be made a part of the record in this case.

WILLIAM MARSHALL, *Judge.*

Dated December 10th, 1889.

THE STATE OF NEBRASKA, } ss:
Colfax County, }

I, F. C. Reinicke, clerk of the district court of Colfax county, Nebraska, do hereby certify that the foregoing bill of exceptions is the original bill of exceptions in the case of Hector C. Bollong *vs.* The Schuyler National Bank of Schuyler, Nebraska, as the same appears on the files of said office.

167 Witness my hand and seal this 13th day of December, A. D. 1889.

F. C. REINICKE,
Clerk Dist. Court. [SEAL.]

168 EXHIBITS.

EXHIBIT NO. 1. H. C. Bollong *vs.* Bank.

Paper No. 1.

$500.00. SCHUYLER, NEB., *Dec.* 8, 1885.

Thirty days after date we or either of us promise to pay to the Schuyler National bank or order five hundred dollars, for value received, negotiable and payable without defalcation of discount at

the banking-house of Sumner & Co., Schuyler, Neb., with interest at the rate of 10 per cent. per annum from maturity until paid.

H. C. BOLLONG.
NEIL BOLLONG.

Due Jan. 7–10.
No. B–819.

(Endorsed on front:) Schuyler National bank. Paid Jan. —, 1886. Schuyler, Nebraska.
(Endorsed on back:) Without recourse. Schuyler National bank.

EXHIBIT No. 2. H. C. Bollong *vs.* Bank. M.

Paper No. 2.

$600.00. SCHUYLER, NEB., *Jan'y* 9, 1886.

Ninety days after date we or either of us promise to pay to the Schuyler Nat'l bank or order six hundred dollars, for value received, negotiable and payable without defalcation of discount at the banking-house of Sumner & Co., Schuyler, Neb., with interest at the rate of ten per cent. per annum from maturity until paid.

H. C. BOLLONG.
NEIL BOLLONG.

Due Ap'l 9–12, '86.
No. B–878.

169 (Endorsed on front:) Schuyler National bank. Paid Apr. 22, 1886. Schuyler, Nebraska.
(Endorsed on back:) Without recourse. C. E. Sumner, p't. Interest 90, 27–10.

EXHIBIT No. 3. Paper No. 3.

$700.00. SCHUYLER, NEB., *Apr.* 12, 1886.

Thirty days after date we or either of us promise to pay to the Schuyler National bank or order seven hundred dollars, for value received, negotiable and payable without defalcation or discount at the Schuyler National bank, Schuyler, Neb., with interest at the rate of ten per cent. per annum, payable annually, from maturity until paid.

H. C. BOLLONG.
NEIL BOLLONG.

Due May 12–15.
No. 68955.

(Endorsed on front:) Schuyler National bank. Paid Jun- —, 1886. Schuyler, Nebraska.

EXHIBIT No. 4. H. C. Bollong *vs.* Bank. M.

Paper No. 4.

$1,000.00. SCHUYLER, NEB., *Nov.* 7, 1885.

Thirty days after date we or either of us promise to pay to the Schuyler National bank or order one thousand dollars, for value received, negotiable and payable without defalcation or discount at the Schuyler National bank, Schuyler, Neb., with interest at the rate of ten per cent. per annum from maturity until paid.

H. C. BOLLONG.
NEIL BOLLONG.

Due Dec. 7–10.
No. B–727.

170 (Endorsed on front:) Schuyler National bank. Paid Oct. 5, 1886. Schuyler, Nebraska.

(Endorsed on back:) C. J. M. 22 head thoroughbred short-horn cows & heifers; one do. bull, "Major Leslie;" 9 do. spring calves. Without recourse. Schuyler National bank.

EXHIBIT No. 5. H. C. Bollong *vs.* Bank.

Paper No. 5.

Know all men by these presents that we, H. C. Bollong and Neil Bollong, of the county of Colfax and State of Nebraska, in consideration of the sum of one thousand dollars to me in hand paid by the Schuyler Nat'l Bank of Schuyler, Neb., party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold and by these presents do grant and convey unto the said party of the second part, his heirs and assigns, etc., the following goods, chattels, and property now in Colfax Co., to wit:

Twenty-two head of short-horn cows & heifers, thoroughbred; one bull, "Major Leslie," spotted, 6 years old.

Nine thoroughbred spring calves.

The above-described chattels are now in my possession, are owned by me, and free from all incumbrances in all respects:

To have and to hold the same forever; and I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever, upon condition, however, that if the said H. C. Bollong & Neil Bollong shall pay to the said Schuyler Nat'l bank, his heirs, assigns, etc., their one certain promissory note dated
171 Nov. 7, 1885, and described as follows, to wit, one for one thousand dollars, payable 30 days after date; one for — dollars, payable —; one for — dollars, payable —, and one for — dollars, payable —, with interest at the rate of ten per cent. per annum from maturity, according to the tenor thereof, then these presents to be void; otherwise in full force.

And we, the said H. C. Bollong & Neil Bollong, do hereby cove-

nant and agree to and with the said Schuyler Nat'l bank that in case of default in the payment of the above-mentioned promissory note, or in case of my attempting to dispose of or remove from said county of Colfax the aforesaid goods and chattels or any part thereof, or if at any time the said mortgagee or his assigns should feel unsafe or insecure, then and in that case it shall be lawful for the said mortgagee or his assigns, by himself or agent, to take immediate possession of said goods and chattels wherever found, the possession of these presents being his sufficient authority therefor, and to sell the same at public auction or so much thereof as shall be sufficient to pay the amount due or to become due, as the case may be, with all reasonable costs pertaining to the taking, keeping, advertising, and selling of said property, together with the sum of $100.00 as liquidated damages for the non-fulfillment of contract, the money remaining after paying said sums, if any, to be paid on demand to the said party of the first part.

Said sale to take place at Schuyler, in the county of Colfax
172 and State of Nebraska, after giving at least twenty days' notice of such sale by advertising in some newspaper printed in the county in which such sale is to take place, or, in case no newspapers are printed therein, by posting up notices in at least five public places in said county, two of which shall be in the precinct where the mortgaged property is to be offered for sale.

Witness my hand and seal this 7th day of November, 1885.

H. C. BOLLONG,
NEIL BOLLONG. [L. S.]

Witness:
C. E. SUMNER.

THE STATE OF NEBRASKA, } ss:
Colfax County, }

Be it remembered that on this 7th day of November, 1885, before the undersigned, C. E. Sumner, a notary public in and for said county, personally came H. C. Bollong and Neil Bollong, to me known to be the identical person- whose names are affixed to and who executed the foregoing instrument as grantor-, and acknowledged the same to be thr*ie* voluntar*y* act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal the day and year last above written.

C. E. SUMNER,
Notary Public.

THE STATE OF NEBRASKA, } ss:
—— *County,* }

I, —— ——, a notary public within and for said county,
173 hereby certify that the foregoing is a true copy of a chattel mortgage this day executed between the within-named parties.

Witness my hand and notarial seal this — day of ——, 188–.

——, ——,
Judge of Probate.

For value received I hereby sell, assign, transfer, and set over to —— —— the within mortgage and notes accompanying the same, and authorize —— —— to collect and discharge the same.

18

$1,000.00. Nov. 7, '85. Chattel mortgage from H. C. & Neil Bollong to Schuyler Nat'l bank.

STATE OF NEBRASKA, } ss:
Colfax County, }

Filed in the clerk's office of said county the 7th day of Nov., 1885, at 2 o'clock and 30 minutes p. m.

T. W. WHITMAN,
County Clerk,
By ALLAN CAMERON, *Deputy.*

Sumner & Company, oldest established banking-house in Colfax county. Collections a specialty. Agents for Union Pacific R. R. lands.

C. E. Sumner, pres't. W. H. Sumner, cashier.

174 EXHIBIT No. 6. H. C. Bollong *vs.* Bank.

Paper No. 6.

$300.00. SCHUYLER, NEB., *Feb'y* 15, 1886.

Ninety days after date we or either of us promise to pay to the Schuyler National bank or order three hundred dollars, for value received, negotiable and payable without defalcation or discount at the Schuyler National bank, Schuyler, Neb., with interest at the rate of ten per cent. per annum, payable annually, from maturity until paid.

H. C. BOLLONG.

Due May 16–19.
No. B–995.

(Endorsed on front:) Schuyler National bank. Paid Jun- 16, 1886. Schuyler, Nebraska.
(Endorsed on back:) Without recourse. Schuyler National bank, May 19, '86, paid $250.00 by charging ac.

EXHIBIT No. 4. Bollong *vs.* Bank.

Paper No. 7.

Deposited with Sumner & Co., bankers, Schuyler, Neb., May 26, 1884, for credit of Bollong & Co:

Rn. of note	1,453 50
Less c'y	30
	1,423 50

EXHIBIT No. 8. Paper No. 8.

Schuyler National bank, successor to Sumner & Company, bankers.

175 $900.00. SCHUYLER, NEB., *May* 5, 1884.

Neil Bollong has deposited in this bank nine hundred dollars, payable to the order of himself, on the return of this certificate, in current funds any after date, with no interest.

No. 21799. T. B. CREWITT, *Cashier*.

(Endorsed on front:) Schuyler National bank. Paid May 21, 1884. Schuyler, Nebraska.

(Endorsed on back:) Neil Bollong, H. C. Bollong.

EXHIBIT No. 9. Paper No. 9.

Schuyler National bank, successor to Sumner & Company, bankers.

$1,600.00. SCHUYLER, NEB., *May* 5, 1884.

Neil Bollong has deposited in this bank sixteen hundred dollars, payable to the order of himself, on the return of this certificate, in current funds any after date, with no interest.

No. 21800. T. B. CREWITT, *Cashier*.

(Endorsed on front:) Schuyler National bank. Paid May 16, 1884. Schuyler, Nebraska.

(Endorsed on back:) Neil Bollong, H. C. Bollong.

EXHIBIT No. 10. Paper No. 10.

$491.75. SCHUYLER, *Dec.* 8, 1885.

The Schuyler National bank, Schuyler, Nebraska.

Pay to H. C. Bollong or bearer four hundred ninety-one $\frac{75}{100}$ dollars.

No. —. SUMNER BROS.

(Endorsed on front:) Schuyler National bank. Paid Dec. 8, 1885. Schuyler, Nebraska.

176 EXHIBIT No. 11. Paper No. 11.

$572.10. SCHUYLER, *Jan'y* 12, 1886.

The Schuyler National bank, Schuyler, Nebraska.

Pay to H. C. Bollong or bearer five hundred seventy-two & $\frac{10}{100}$ dollars.

No. —. SUMNER BROS.

(Stamped:) Schuyler National bank. Paid Jan. 12, 1886. Schuyler, Nebraska.

EXHIBIT No. 12. Paper No. 12.

$983.50. SCHUYLER, *Nov.* 7, 1885.

The Schuyler National bank, Schuyler, Nebraska.

Pay to H. C. & N. Bollong or bearer nine hundred eighty-three $\frac{50}{100}$ dollars.

No. —. SUMNER BROS.

(Stamped:) Schuyler National bank. Paid Nov. 7, 1885. Schuyler, Nebraska.

EXHIBIT No. 13. Paper No. 13.

$953.50. SCHUYLER, 12, 10, 1885.

The Schuyler National bank, Schuyler, Nebraska.

Pay to H. C. Bollong or bearer nine hundred fifty-three $\frac{50}{100}$ dollars.

No. —. SUMNER BROS.

(Stamped:) Schuyler National bank. Paid Dec. 11, 1885. Schuyler, Nebraska.

EXHIBIT No. 14. Paper No. 14.

$286.05. SCHUYLER, 2, 15, 1886.

The Schuyler National bank, Schuyler, Nebraska.

177 Pay to H. C. Bollong or bearer two hundred eighty-six $\frac{05}{100}$ dollars.

No. —. SUMNER BROS.

(Stamped:) Schuyler National bank. Paid Feb. 15, 1886. Schuyler, Nebraska.

EXHIBIT No. 15.

Know all men by these presents that I, Neil Bollong, of the county of Colfax and State of Nebraska, in consideration of the sum of twenty-six hundred dollars to me in hand paid by the Schuyler National Bank of Schuyler, Nebraska, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold and by these presents do grant and convey unto the said party of the second part, his heirs and assigns, etc., the following goods, chattels, and property, now situate in the county of Colfax and State of Nebraska, to wit:

20 head of thoroughbred short-horn cows.
20 head of two-year-old steers.
20 yearling steers.
10 cows, 4 and 5 years old.

10 heifers, yearlings & two years old.
One thoroughbred bull, named "Maple Creek Duke," registered.
One bay stallion, named "Bill," 6 years old.
One roan horse, about 6 years old.
One sorrel colt, yearling.

The above-described chattels are now in my possession, are owned by me and free from all incumbrances in all respects.

To have and to hold the same forever; and I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever, upon condition, however, that if the
178 said —— shall pay to the said Schuyler National bank, his heirs, assigns, etc., his one promissory note dated herewith and described as follows, to wit:

One for $2,600 *dollars*, payable ninety days after date, with interest, at the rate of 10 per cent. annum, from maturity, according to the tenor thereof, then these presents to be void; otherwise in full force.

And I, the said Neil Bollong, do hereby covenant and agree to and with the said Schuyler National bank that in case of default made in the payment of the above-mentioned promissory note or in case of my attempting to dispose of or remove from said county of Colfax the aforesaid goods and chattels or any part thereof, or if at any time the said mortgagee or his assigns should feel unsafe or insecure, then and in that case it shall be lawful for the said mortgagee or his assigns by himself or agent to take immediate possession of said goods and chattels wherever found, the possession of these presents being his sufficient authority therefor, and to sell the same at public auction or so much thereof as shall be sufficient to pay the amount due or to become due, *ad* the case may be, with all reasonable costs pertaining to the taking, keeping, advertising, and selling of said property, together with the sum of $260 as liquidated damages for non-fulfillment of contract, the money remaining after paying said sums to be paid on demand to the said party of the first part.

Said sale to take place at Schuyler, in the county of Colfax and State of Nebraska, after giving at least twenty days' notice of such sale by advertising in some newspaper printed in the county
179 in which such sale is to take place, or, in case no newspapers are printed therein, by posting up notices in at least five public places in said county, two of which shall be in the precinct where the mortgaged property is to be offered for sale.

Witness my hand and seal this 5 day of May, 1884.

NEIL BOLLONG. [L. S.]

Witness:
T. B. CREWITT.

THE STATE OF NEBRASKA, } *ss*:
—— *County*, }

Be it remembered that on this — day of ——, 188–, before the undersigned, —— ——, a — in and for said county, personally

came —— ——, to me known to be the identical person whose name — affixed to and who executed the foregoing instrument as grantor, and acknowledged the same to be — voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and — seal the day and year last above written.

—— ——.

STATE OF NEBRASKA, } ss:
—— *County*, }

I, —— ——, a notary public within and for said county, hereby certify that the foregoing is a true copy of a chattel mortgage this day executed between the within-named parties.

Witness my hand and notarial seal this — day of ——, 18—.

—— ——,
Judge of Probate.

180 For value received I hereby sell, assign, transfer, and set over to —— —— the within mortgage and notes accompanying the same, and authorize —— —— to collect and discharge the same.

Chattel mortgage from Neil Bollong to Schuyler National bank. Paper No. 15.

STATE OF NEBRASKA, } ss:
Colfax County, }

Filed in the clerk's office of said county the 6th day of May, 1884, at 4 o'clock and — minutes p. m.

T. D. WHITMAN,
County Clerk.

Sumner & Company, oldest established banking-house in Colfax county. Collections a specialty. Agents for Union Pacific R. R. lands.

C. E. Sumner, pres't. W. H. Sumner, cashier.

EXHIBIT 16. Paper No. 16.

$1,150.00. SCHUYLER, NEB., *May 15th*, 1886.

Ninety days after date we or either of us promise to pay to the Schuyler National bank or order —, for value received, negotiable and payable without defalcation or discount at the Schuyler National bank, Schuyler, Neb., with interest at the rate of *ten* per cent. per annum, payable annually, from maturity until paid.

H. C. BOLLONG.
NEIL BOLLONG.

Due Aug. 13–16.
No. 69383.

(Stamped:) Schuyler National bank. Paid Oct. 5, 1886. Schuyler, Nebraska.

(Endorsed on back:) Paid Oct. 4, 1886.

181 EXHIBIT No. 17. Paper 17.

$1,500.00. SCHUYLER, NEB., *April 26th*, 1886.

Ninety days after date we or either of us promise to pay to the Schuyler National bank or order fifteen hundred dollars, for value received, negotiable and payable without defalcation or discount at the Schuyler National bank, Schuyler, Neb., with interest at the rate of ten per cent. per annum, payable annually, from maturity until paid.

H. C. BOLLONG.
NEIL BOLLONG.
T. L. PALMER.

Due July 25–28.
No. 69056.

(Stamped:) D. Schuyler National bank. Paid Oct. 5, 1886. Schuyler, Nebraska.
(Endorsed on back:) Paid Oct. 4, 1886.

EXHIBIT No. 18. H. C. Bollong *vs.* Bank.

Paper No. 18.

SCHUYLER NATIONAL BANK }
v.
HECTOR C. BOLLONG. }

MAXWELL, *J.*:

This action was brought on the 19th day of March, 1887, by the defendant in error against the plaintiff in error, in the district court of Colfax county, to recover, under sections 5197 and 5198 of the Revised Statutes of the United States, double the amount of interest paid on certain usurious contracts. On the trial of the cause the court found that the defendant in error had paid to the plaintiff in error "the sum of $912.42, and that the same was usurious,
182 as in said petition alleged." The court thereupon rendered judgment in favor of the defendant in error and against the plaintiff in error for the sum of $1,824.84, "being double the amount so as aforesaid charged, taken, and received."

The first ground of error assigned is the overruling of the motion of the plaintiff in error to strike the petition from the filed on the ground that the record shows "that the affidavit verifying the petition was made before one Clifton C. Sabin, a clerk of C. J. Phelps, one of the attorneys of record in the above-entitled action." Section 118 of the Code, as it existed at the time the verification was made, authorized any person "before whom a deposition might be taken" to administer the oath. The statute does not seem to prohibit a notary in the office of an attorney from administering an oath verifying a pleading prepared by such attorney. The motion, therefore, was properly overruled. In this decision we do not intend to

qualify what has been said by the court in Payne *v.* Briggs, 8 Neb., 79, as under our code the verification of a pleading is to a great extent a matter of form.

2. The petition contains a large number of causes of action. These several causes are not separately stated and numbered, as required by section 93 of the Code. The defendant below (plaintiff in error) filed a motion to require the plaintiff below (defendant in error) to separately state and number his causes of action. This motion the court overruled, to which the plaintiff in error excepted, and now assigns the same for error. The motion to separately state and number the causes of action should have been sustained. A large number of the causes of action had accrued more than two years before the bringing of this suit, and, had they been separately stated and numbered, would have been subject to demurrer.
183 This right the defendant below was deprived of by the ruling of the court. A plaintiff cannot jumble his causes of action together, and, in answer to an erroneous overruling of a motion to separately state and number, say that no injury has resulted from such ruling.

Section 93 provides "that where the petition contains more than one cause of action, each shall be separately stated and numbered." Each cause of action set out in a petition must show that the defendant is liable to the plaintiff upon the matter stated in that count, and where objection is made the plaintiff should be required to file a petition in due form.

3. Section 5198 of the Revised Statutes of the United States provides "that the taking, receiving, or reserving or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid or his legal representative may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same, provided such action is commenced within two years from the time the usurious transaction occurred." There is no statement in the petition that the bank knowingly contracted for and received a greater rate of interest than is allowed by law, nor are there other words
184 which are equivalent thereto. The right to recover is made to depend upon this condition, and this court has no right to waive the making of such allegation. The petition, therefore, fails to state a cause of action in that regard.

4. The plaintiff in error contends that the State courts have no jurisdiction, that being conferred exclusively on the Federal tribunals.

In Bank *v.* Overman, 22 Neb., 116, 34 N. W. Rep., 107, we held that the State courts do have jurisdiction. That decision was rendered after a careful examination of the decisions of the several courts, both State and national, and we believe it to be correct. It will therefore be adhered to. As there must be a new trial, it is un-

necessary to consider the other assignments of error. The judgment of the district court is reversed and the cause remanded for further proceedings.

The other judges concur.

Judgment.

SCHUYLER NATIONAL BANK, Plaintiff, vs. HECTOR C. BOLLONG, Defendant. } Error from the District Court of Colfax County. No. 3098.

This cause came on to be heard, was taken up, and argued by counsel; on consideration whereof the court finds there is error apparent on the record in the proceedings and judgment of the district court. It is therefore considered by the court that the said judgment be, and the same hereby is, reversed, the cause remanded for further proceedings, and that the plaintiff recover of the defendant its costs, taxed at $—, and that a mandate issue ac-
185 cordingly.

THE STATE OF NEBRASKA, *ss:*

I, Guy A. Brown, clerk of the supreme court of the State of Nebraska, do hereby certify that the above is a true and correct copy of the opinion filed November 21, 1888, and the judgment rendered by said court and entered of record on the 15th day of November in an action wherein The Schuyler National Bank was plaintiff and Hector C. Bollong was defendant.

In testimony whereof I have hereunto set my hand and the seal of said court this 23rd day of March, 1889.

GUY A. BROWN, [SEAL.]
Clerk Supreme Court.

(Endorsed:) Schuyler National Bank *v.* Hector C. Bollong. Copy of opinion and judgment. Ex. 18.

EXHIBIT No. 19. Paper No. 19.

In the District Court of Colfax County, Nebraska.

HECTOR C. BOLLONG
vs.
THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA. } Petition.

The plaintiff says that the said Schuyler National Bank, *of* defendant, is a corporation duly incorporated, existing, & doing business as a national banking association under and by virtue of a law of the Congress of the United States of America, and was such national banking association and so doing business during
186 the happening of all the events hereinafter set forth.

The plaintiff, complaining of said defendant, further alleges

first, that on the 5th day of May, 1884, plaintiff was indebted to the defendant in the sum of $2,600.00 for money borrowed by the plaintiff from the defendant prior to that time; that upon said day the plaintiff contracted with the defendant for an extension of the time of payment of said indebtedness and executed a promissory note therefor, payable ninety days therefrom, and the defendant then charged, took, and received from the plaintiff as interest in advance for said sum for ninety days the sum of $80.60; that on or about the 6th day of August, 1884, said note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable ninety days therefrom, and the defendant then charged, took, and received from the plaintiff as interest in advance for said sum for ninety days the sum of $80.60; that on or about the 7th day of November, 1884, said promissory note being due and unpaid, the plaintiff executed a promissory note, payable to the order of the defendant, in renewal thereof and payable ninety days therefrom, — the defendant then charged, took, and received from the plaintiff as interest in advance upon said sum for ninety days the sum of $100.75; that on or about the 7th day of February, 1885, said promissory note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant ninety days therefrom, — the defendant then charged, took,
and received from the plaintiff as interest in advance upon
187 said sum for ninety days the sum of $100.75; that on or about the 19th day of June, 1885, said promissory note being then 34 days past due, the plaintiff paid thereon to the defendant the sum of $1,100.00, and as interest thereon for said term of 34 days past due the plaintiff paid to the defendant and the defendant received the sum of $28.60, and upon the same day the plaintiff executed a promissory note to the order of the defendant in renewal of $1,500.00 thereof, payable ninety days therefrom, and the defendant then charged, took, and received from the plaintiff as interest in advance upon said sum of $1,500.00 for ninety days the sum of $46.50; that on or about the 18th day of September, 1885, said promissory note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant ninety days therefrom, and the defendant then charged, took, and received from the plaintiff as interest in advance upon said sum of $1,500.00 for ninety days the sum of $46.60; that on or about the 22nd day of December, 1885, said promissory note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant ninety days therefrom, and the defendant then charged, took, and received from the plaintiff as interest in advance upon said sum of $1,500.00 — ninety days the sum of $69.75; that on or about the 26th day of April, 1886, said promissory note of $1,500.00 being still due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant ninety days therefrom, and the defendant then charged, took, and received from the plaintiff as interest in advance upon said sum of $1,500 for ninety days the sum of $69.75; on the 4th day of October, 1886, said promissory note for $1,500

188 being still due and unpaid, the plaintiff executed to the defendant a promissory note for the amount of the balance of said loan of $1,500 and other balances then found due from the plaintiff to the defendant, payable to the order of the defendant ninety days therefrom, and the defendant then charged, took, and received from the plaintiff as interest upon said $1,500 for two months and six days prior to said 4th day of October, 1886 (being the time said last-mentioned note had been overdue), the sum of $49.50; that on the 21st day of January, 1887, said sum of $1,500, together with the other sums above mentioned, was by the plaintiff paid to the defendant in full, and that said sums so as aforesaid paid by the plaintiff to the defendant were for the use of money at a rate of interest greater than 10 per cent. per annum; that each and every item of interest so as aforesaid paid by plaintiff to the defendant and by the defendant contracted for and received, in all amounting to 673.30, was at a greater rate of interest than was allowed by the laws of the State of Nebraska and was at the rate of 18 per cent. per annum; that said transaction was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action, and by the violation of said statute the defendant became indebted to the plaintiff in the sum of $1,346.60, no part of which has been paid.

Second. The plaintiff, complaining of the defendant, further says that on the 26th day of May, 1884, he borrowed from the defendant the sum of $1,500 and executed a promissory note for said amount, payable to the order of said defendant ninety days thereafter, and that the defendant then retained and reserved out

189 of said sum of $1,500 as interest on the same for ninety days in advance the sum of $46.50; that on or about the 26th day of August, 1884, said promissory note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant ninety days therefrom, and the defendant then charged, took, and received as interest in advance upon said sum of $1,500 for ninety days the sum of $46.50; that on or about the 26th day of November, 1884, said promissory note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant ninety days therefrom, and the defendant charged, took, and received from the plaintiff as interest in advance upon said sum of $1,500 for ninety days the sum of $46.50; that on or about the 27th day of February, 1885, said promissory note becoming due and payable, the plaintiff executed to the defendant a promissory note in renewal thereof, payable to the order of the defendant ninety days therefrom, and the defendant then charged, took, and received from the plaintiff as interest in advance upon said sum of $1,500 the sum of $46.50; that on or about the 29th day of May, 1885, said promissory note becoming due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant ninety days therefrom, and the defendant then charged, took, and received from the plaintiff as interest in advance upon said sum of $1,500 the sum

of 46.50; that on or about August 31st, 1885, plaintiff paid to the defendant upon said note the sum of $500 and executed a promissory note, payable to the order of the defendant ninety days therefrom, in renewal of the balance of said sum, to wit, $1,000.00, and the defendant then charged, took, and received from
190 the plaintiff as interest in advance upon said sum of $1,000.00 for said ninety days the sum of $31.00; that on or about the 2nd day of December, 1885, plaintiff paid to the defendant upon said note the sum of $600.00, and on the 5th day of December, 1885, executed a promissory note, payable to the order of the defendant thirty days therefrom, in renewal of the balance of said sum, to wit, $400.00, and the defendant then charged, took, and received from the plaintiff as interest in advance upon said sum of $400.00 the sum of $6.60; that on or about the 4th day of January, 1886, said promissory note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant ninety days therefrom, and the defendant then charged, took, and received from the plaintiff as interest in advance upon said sum of $400.00 the sum of 18.60; that on or about the 7th day of April, 1886, said promissory note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant thirty days therefrom, and the defendant then charged, took, and received from the plaintiff as interest in advance upon said sum of $400 the sum of $6.60; that on or about the 11th day of May, 1886, said promissory note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant ninety days therefrom, and the defendant then charged, took, and received from the plaintiff as interest in advance upon said sum of $400.00 the sum of $18.60; that on or about May 15th, 1886, said last $400.00 being still unpaid and the plaintiff being at the same time further indebted to the defendant on other balance-, amounting to $750.00, the
191 plaintiff then executed a promissory note for the sum of $1,150.00, including said sum of $400 and said unpaid balances, payable to the order of the defendant ninety days thereafter; that on the 4th day of October, 1886, the said sum of $1,150.00 was included in and made a part of a general balance- then found due from the plaintiff to the defendant; that when said general balance was so found the defendant added to said sum of $1,150 the further sum of $27.63 for interest on said sum of $1,150 for 38 days prior to said 4th day of October, 1886, and that on the 21st day of January, 1887, plaintiff paid to the defendant said sum of $1,150 and said additional sum of $27.63 in full, and that each and all of said sums on money so as aforesaid paid by the plaintiff to the defendant as interest were at a rate of interest greater than ten per cent. per annum; that each and every item of interest so as aforesaid paid by plaintiff to the defendant and by the defendant contracted for and received, including said sum of $76.50 so as aforesaid on the 26th day of May, 1884, received and retained and included in the final payment of said note, in all amounting to $341.53, was at a greater rate of interest than was allowed by the laws of the State of

Nebraska *as* was at the rate of 10 per — annum; that said transaction was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action. By the violation of said statute the defendant became indebted to the plaintiff in the sum of $683.06, no part of which has been paid.

Third. The plaintiff, further complaining, says that on or about the 6th day of November, 1884, he borrowed from the defendant
the sum of $200.00, executing a promissory note therefore,
192 payable to the order of the defendant thirty days thereafter, and the defendants took and reserved out of said sum as interest in advance the sum of $3.00, and that said sum was at a greater rate of interest than ten per cent. per annum.

Fourth. The plaintiff, further complaining, says that on or about the 8th day of December, 1885, he borrowed from the defendant the sum of $500.00 and executed a promissory note for said amount, payable to the order of the defendant thirty days thereafter, and that the defendant then retained and reserved out of said sum of $500.00 as interest on the same for thirty days in advance the sum of $7.50; that on or about the 9th day of January, 1886, said promissory note being due and unpaid, the plaintiff further borrowed the sum of $100 and executed a promissory note for the sum of $600 in renewal of said sum of $500 and $100, payable to the order of the defendant ninety days thereafter, and that the defendant then charged, took, and received as interest in advance upon said sum of $600, ninety days, the sum of $27.00; that on or about the 8th day of April, 1886, said promissory note being due and unpaid, the plaintiff, on the 14th day of April, 1886, further borrowed the sum of $100 and executed a promissory note for said $100 and in renewal of said sum of $600, payable to the order of the defendant thirty days thereafter, and that the defendant then charged, took, and reserved as interest in advance upon said sum of $700 for thirty days the sum of $10.50; that on the 15th day of May, 1886, said $700 and other sums due the defendants, amounting in all to $1,150.00, were
combined, and plaintiff executed a promissory note therefor,
193 pay- to the defendant's order, and that the defendant then charged, took, and received from the plaintiff as interest on $700 thereof for ninety days in advance the sum of $31.50; that said sum was paid in full 21st day of January, 1887, and that each and all of said sums of money so as aforesaid paid by the plaintiff to the defendant as interest were at a rate of interest greater than ten per cent. per annum; that each and every item of interest so as aforesaid paid by plaintiff to the defendant & by the defendant contracted for and received, including said sum of $7.50 so as aforesaid on the 8th day of Dec., 1885, reserved and retained and included in the final payment of said note, in all amounting to the sum of $76.50, was at a greater rate of interest than was allowed by the laws of the State of Nebraska and was at the rate of 18 per cent. per annum; that said transaction was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this ac-

tion, and that by the violation of said statutes defendant became indebted to the plaintiff in the sum of $153.00, no part of which has been paid.

Fifth. The plaintiff, complaining of the defendant, further says that on or about the 7th day of November, 1885, he borrowed from the defendant the sum of $100.00 and executed a promissory note for said amount, payable to the order of said defendant thirty days thereafter, and that the defendant then retained and reserved out of said sum of 41,000.00 as interest on the same for thirty days in advance the sum of $16.50; that on or about the 10th day of
194 December, 1885, said promissory note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant ninety days thereafter, and the defendant then charged, took, and received as interest in advance upon said sum of $1,000.00 for ninety days the sum of $46.50; that on or about the 13th day of March, 1886, said promissory note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant ninety days thereafter, and the defendant charged, took, and received as interest in advance upon said sum of $1,000.00 for ninety days the sum of $46.50; that on or about the 14th day of June, 1886, said promissory note being due and unpaid, the plaintiff executed a promissory note in renewal thereof, payable to the order of the defendant sixty days thereafter, and the defendant then charged, took, and received as interest in advance upon said sum of $1,000 for sixty days the sum of $31.50; that on the 4th day of October, 1886, said promissory note being due and unpaid and having run 49 days past maturity, the plaintiff paid and the defendant took and received as interest thereon for said 49 days the sum of $24.00, and plaintiff paid the above amount, to wit, $1,000.00, on the 21st day of January, 1887, and that each and all of said sums of money so as aforesaid paid by the plaintiff to the defendant as interest were at a rate of interest greater than ten per cent. per annum; that each and every item of interest so as aforesaid paid by the plaintiff to the defendant and by the defendant contracted for and received, including said sum of $16.50 so as aforesaid, on the 7th day of Nov., 1885, reserved and retained and included in the final payment of
195 said note, in all amounting to $165.00, was at a greater rate of interest than was allowed by the laws of the State of Nebraska and was at the rate of — per cent. per annum; that said transaction was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action. By violation of said statute the defendant became indebted to the plaintiff in the sum of $330, no part of which has been paid.

Sixth. The plaintiff, further complaining, says that on the 15th day of February, 1886, he borrowed from the defendant the sum of $300.00, executing a promissory note therefor, payable to the order of defendant ninety days thereafter, and that the defendants then retained and reserved out of said sum of $300 as interest in advance upon same for ninety days the sum of $13.50; that on the 19th day

of May, 1886, plaintiff paid on said promissory note the sum of $250.00, and the balance, namely, $50, went into note for $1,150 heretofore mentioned and was finally paid by the plaintiff to the defendant in full on the 21st day of January, 1887, and that each and all of said sums of money so as aforesaid paid by the plaintiff to the defendant as interest were at a rate of interest greater than ten per cent. per annum.

That said item of $13.50 reserved and retained on the 15th day of February and paid in the final payment of said note was at a greater rate of interest than was allowed by the laws of the State of Nebraska and was at the rate of 18 per cent. per annum; that said transaction was in violation of section 5198 of the Rev. Stat-
196 utes of the United States, corrup and usurious, and occurred within two years prior to the commencement of this transaction, and that by the violation of said statute the defendant became indebted to the plaintiff $27.00, no part of which has been paid.

Seventh. The plaintiff, complaining of the defendant, says that on or about the 14th day of July, 1886, he borrowed from the defendant $100, executing a promissory note therefor, payable to the order of the defendant thirty days thereafter, and that the defendant then retained & reserved out of said sum of $100 for thirty days the sum of $1.50; that on or about October 4th, 1886, said promissory — being due and unpaid and having run 49 days past maturity, plaintiff executed a promissory note therefor, including other sums, payable to defendant's order, and the defendant charged, took, and received as interest for said sum of $100 for said 49 days as interest in advance the sum of $2.40, and that said promissory note, including said amount, to wit, $100, was paid by plaintiff to defendant on the 21st day of January, 1887, and that each and all of said sums of money so as aforesaid paid by the plaintiff to the defendant as interest was at a rate of interest greater than ten per cent. per annum; that each and every item of interest so as aforesaid paid by plaintiff to the defendant and by defendant contracted for and received, including said sum of $1.50 so as aforesaid on the 14th day of July, 1886, reserved and retained in the final payment of said note, in all amounting to $3.90, was at a greater amount of interest than was allowed by the laws of the State of Nebraska and was at the rate of 18 per cent. per annum; that said transaction was in violation of section 5198 of the Revised Statutes of the
197 United States, corrupt and usurious, and occurred within two years prior to the commencement of this action, and that by the violation of said statute the defendant became indebted to plaintiff in the sum of $7.80, no part of which has been paid.

Eighth. The plaintiff, further complaining of the defendant, says that on the 11th day of May, 1885, he borrowed of the defendant the sum of $225.00, executing a promissory note therefor, payable to order of defendant ninety days after date, and the defendant then retained and reserved out of said sum of $225.00 as interest on the same for ninety days the sum of $10.50, and that said promissory note was paid by plaintiff to defendant in full at the maturity thereof, and that said sum of interest paid by plaintiff to defendant

was greater than ten per cent. per annum; that said sum of $10.50 reserved and retained on the 11th day of May, 1885, and paid in final payment of said note was at a greater rate of interest than was allowed by the laws of the State of Nebraska and was at the rate of 18 per cent. per annum; that said transaction was in violation of section 5198 of the Rev. Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action, and that by the violation of said statute the defendant became indebted to plaintiff in the sum of $21.00, no part of which has been paid.

Ninth. The plaintiff, further complaining of the defendant, says that on the 4th day of October, 1886, all his indebtedness to the defendant was aggregated, and the balance due thereon was found to be $1,390.21, for which said sum he executed a promissory note, payable to defendant's order ninety days thereafter; that then and there there was by the defendant added to said sum of $1,391.21 the further sum of $44.79 as and for interest in advance upon
198 said sum of $1,391.71 for ninety days, and that said note and interest was fully paid by the plaintiff to the defendant on the 21st day of January, 1887, and that $1,000 thereof was not paid until 16 days after the maturity of said note, and that defendant charged, took, and *reserved* — plaintiff as interest upon said $1,000.00 for 16 days the sum of $5.00, and that each and all of said sum of money so as aforesaid paid by the plaintiff to the defendant as interest *were* at a rate of interest greater than ten per cent. per annum; that said sum of $49.79 so as aforesaid paid by plaintiff to defendant and by defendant contracted for and received was at a greater rate of interest than was allowed by the laws of the State of Nebraska and was at the rate of 18 per cent. per annum; that said transaction was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action, and — the violation of said statute the defendant became indebted to plaintiff in the sum of $99.58, no part of which has been paid.

That the amount of unlawful interest so as aforesaid by plaintiff paid to the defendant and by defendant contracted for and received from the plaintiff in violation of said statute is $1,334.02, and by the violation of said statute the defendant became and is indebted to the plaintiff in all in the sum of $2,668.04, no part of which has been paid, for which plaintiff demands judgment.

Wherefore plaintiff prays judgment against defendant in the sum of $2,674.04 and for the costs of this action.

(Signed) J. A. GRIMISON AND C. J. PHELPS,
Att'ys for Plaintiff.

199 THE STATE OF NEBRASKA, } ss:
Colfax County, }

HECTOR C. BOLLONG, being first duly sworn, on his oath says that he is the plaintiff mentioned in the foregoing petition and that the facts therein stated are true, as he verily believes.

(Signed) HECTOR C. BOLLONG.

Subscribed in my presence and sworn to before me this 19th day of March, 1887.

[SEAL.] (Signed) CLIFTON O. SABIN,
Notary Public.

THE STATE OF NEBRASKA, } ss:
Colfax County, }

I, F. C. Reinecke, clerk of the district court in and for said county, do hereby certify that the above and foregoing is a true and correct copy of the petition filed in the above-entitled cause on the 19th day of March, 1887, as the same is on file and of record in my office.

Witness my hand and seal this 23rd day of November, A. D. 1889.

F. C. REINECKE, [SEAL.]
Clerk of the District Court.

(Endorsed:) Copy. Exhibit No. 19. In the district court of Colfax county, Neb. Hector C. Bollong *vs.* The Schuyler National Bank of Schuyler, Neb. Petition. No. 3—325. Filed Mar. 19, 1888. T. W. Whitman, clerk dist. court, Colfax county. J. H. Grimison and C. J. Phelps, att'ys for pl'ff.

200 HECTOR C. BOLLONG }
vs.
SCHUYLER NATIONAL BANK. }

SCHUYLER, NEBRASKA, *December* 3, 1889.

Received of E. T. Hodsdon, att'y for the defendant in the above-entitled action, a draft of the bill of exceptions in the above-entitled action, the same being submitted for examination and amendment.

J. A. GRIMISON AND
C. J. PHELPS,
Att'ys for the Plaintiff.

SCHUYLER, NEB., *December 4th*, 1889.

I herewith return the draft of bill of exceptions in the above-entitled cause submitted to me on the 3rd day of Dec., 1889, and have no amendments to make; and it is further ordered that said bill of exceptions may be settled and allowed by F. C. Reinecke, clerk of dist. court, and be made part of the record in this case.

J. A. GRIMISON,
C. J. PHELPS,
Att'ys for Plaintiff.

THE STATE OF NEBRASKA, } ss:
Colfax County, }

I, F. C. Reinecke, clerk of the district court of Colfax county, do hereby certify that the foregoing is the original bill of exceptions in said cause and also a true and perfect transcript of the amended petition, amended answer, reply, and all motions filed in said cause since the filing of the amended petition, together with the ruling

of the court thereon and request for findings by the defend-
201 ant and the findings, both of law and fact, by the court and the exceptions by the defendant to the findings, motion for a new trial by the defendant, and judgment of the court rendered in this action.

Witness my hand and seal of said court this 16th day of December, 1889.

F. C. REINECKE, *Clerk.* [SEAL.]

(Endorsed:) 4026. Schuyler National Bank *v.* Hector C. Bollong. Bill of exceptions.

202 And thereupon, to wit, on the 17th day of December, 1889, there issued out of said court a summons in error in words and figures following, to wit:

THE STATE OF NEBRASKA, *ss:*

To the sheriff of the county of Colfax:

You are hereby commanded to notify Hector C. Bollong that a petition in error has been filed in the supreme court of the State of Nebraska by the Schuyler National Bank of Schuyler, Nebraska, asking the reversal of a judgment against it rendered Nov. 16, 1889, in a certain cause in the district court of Colfax county, wherein said Bollong was plaintiff and said bank was defendant, and to appear before the supreme court, at the city of Lincoln, on the 7th day of January, 1890, then and there to do and receive what the said supreme court shall order in the premises.

You will make due return of this summons on or before the 7th day of Jan'y, 1890.

Witness my hand and the seal of said court, at the city of Lincoln, this 17th day of December, 1889.

WALTER A. LEESE, *Clerk.* [SEAL.]

No. 4026. Supreme court, State of Nebraska. Schuyler National Bank *vs.* Hector C. Bollong. Summons in error.

And afterwards, to wit, on the 20th day of December, 1889, said summons in error was returned and filed endorsed as follows:

Schuyler, Neb., December 19th, 1889. I hereby accept service of the within summons in error and waive a copy thereof, and do hereby enter appearance for the within-named defendant in
203 error in within-entitled action generally to said action. C. J. Phelps, att'y for the defendant in error.

Supreme court of Nebraska. Filed Dec. 20, 1889. Walter A. Leese, clerk.

And afterwards, to wit, May 6th, 1891, the following judgment was rendered by said court and entered of record, to wit:

SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, Plaintiff in Error, *vs.* HECTOR C. BOLLONG, Defendant in Error. } Error from the District Court of Colfax County. No. 4026.

This cause came on to be heard, was taken up and argued by counsel; on consideration whereof the court finds there is no error apparent on the record in the proceedings and judgment of the district court. It is therefore considered by the court that said judgment be, and the same hereby is, affirmed, and that the defendant in error recover of the *the* plaintiff in error his costs, taxed at $—, and that a mandate issue accordingly.

And on the same day, to wit, May 6th, 1891, there was filed in the office of the clerk of said court a certain opinion in words and figures following, to wit:

204 *Opinion. Filed May* 6, 1891.

SCHUYLER NATIONAL BANK *v.* HECTOR C. BOLLONG. } No. 4026.

A motion filed by the defendant to strike out several words in the plaintiff's petition: Held, properly overruled.

2. The courts of record of the State have jurisdiction in actions brought under sections 5197 and 5198 of the Revised Statutes of the United States to recover from national banks the penalty for knowingly taking, receiving, reserving, or charging a greater rate of interest than is allowed by law.

3. The questions of law involved in the case were settled in Schuyler National Bank *v.* Bollong, 24 Neb., 821 and 825, and there is no material error in the record.

205 MAXWELL, *J.*:

This action was brought in the district court of Colfax county to recover the penalties imposed by the United States statutes for knowingly contracting for and receiving usurious interest.

There are thirty-one counts in the petition.

The defendant moves to strike out of each of said counts the words "so as aforesaid paid by the plaintiff to the defendant and by the defendant knowingly contracted for and received from the plaintiff;" also "corrupt, usurious, and occurred within two years prior to the commencement of this action," because the same are irrelevant, redundant, superfluous, and scandalous.

The motion was overruled, and there was no error in overruling the same. Objections were also made to the jurisdiction of the court, it being claimed that the courts of the United States have exclusive jurisdiction in this class of cases.

Originally such courts seem to have had exclusive jurisdiction, but many years ago the statute was changed, authorizing the State courts to try such actions.

The question has been before this court a number of times and carefully considered and the jurisdiction of the State courts sustained. The objection, therefore, is unavailing.

The defendant below in its amended answer alleges, "1st, that the said alleged amended petition was filed in this court on the 11th day of January, A. D. 1889; that on the 19th day of March, A. D. 1887, a certain paper-writing was filed in this court which contained the names of the parties herein, which was denominated a petition and to which other pleadings were filed as required by law, and proceedings and trial were had in this court on said pretended issues so made up as aforesaid, and that the defendant herein afterwards prosecuted a petition in error on said judgment to the supreme court of the State of Nebraska, and at the July, A. D. 1888, term of said supreme court, to wit, on November 21st, 1888, it was,
206 upon consideration by said supreme court, duly adjudged that said paper-writing filed on March 19th, A. D. 1887, was not a petition, and the above-mentioned judgment was by reason thereof on said 21st day of November, 1888, duly reversed by said supreme court; that each and every cause of action stated in said alleged amended petition did not accrue until two years next before the commencement of this action and did accrue within two years next before the filing of the amended petition herein, as provided by sections 5197 and 5198 of the Revised Statutes of the United States, under which said causes of action are brought.

2nd. That each and every of the said causes of action stated in said alleged amended petition are new and different causes of action and are not the identical causes of action stated in said original paper-writing alleged to be a petition and filed herein on March 19th, 1887.

3rd. That the 1st, 7th, 8th, 12th, 13th, 14th, 15th, 16th, 19th, 20th, 23rd, 24th, and 25th causes of action set forth in plaintiff's amended petition did not accrue to the plaintiff herein alone, but to him and one Neil Bollong, who is still living.

4th. That the 2nd, 3rd, 4th, 5th, 6th, 9th, 10th, and 11th causes of action set forth in the plaintiff's amended petition did not accrue to the plaintiff herein alone, but to him and one Thomas L. Palmer, who is still living.

5th. That the 29th cause of action set forth in the plaintiff's amended petition did not accrue to the plaintiff herein, but to him and one Neil R. Bollong, who is still living.

6th. That the 13th cause of action set forth in plaintiff's amended petition did not accrue to the plaintiff herein alone, but to him and Thomas L. Palmer and Neil R. Bollong, who are still living.

7th. That it denies each and every allegation in said amended petition contained."

The reply is a general denial.

207 On the trial of the cause the court was required to make special findings, which it did, as follows:

"1st. Upon the first cause of action for the plaintiff, $93.00.

2nd. Upon the second cause of action for the plaintiff, $93.00.

3rd. Upon the third cause of action for the plaintiff, $139.50.
4th. Upon the fourth cause of action for the plaintiff, $139.50.
5th. Cause of action withdrawn.
6th. Upon the sixth cause of action for the plaintiff, $99.00.
7th. Upon the seventh cause of action for the plaintiff, $161.20.
8th. Upon the eighth cause of action for the plaintiff, $57.20.
9th. Upon the ninth cause of action for the plaintiff, $93.00.
10th. Upon the tenth cause of action for the plaintiff, $93.00.
11th. Upon the eleventh cause of action for the plaintiff, $62.00.
12th. Upon the twelfth cause of action for the plaintiff, $13.20.
13th. Upon the thirteenth cause of action for the plaintiff, $37.20.
14th. Upon the fourteenth cause of action for the plaintiff, $13.20.
15th. Upon the fifteenth cause of action for the plaintiff, $37.20.
16th. Upon the sixteenth cause of action for the plaintiff, $55.26.
19th. Upon the nineteenth cause of action for the plaintiff, $21.00.
20th. Upon the twentieth cause of action for the plaintiff, $63.00.
23rd. Upon the twenty-third cause of action for the plaintiff, $93.00.
24th. Upon the twenty-fourth cause of action for the plaintiff, $62.00.
25th. Upon the twenty-fifth cause of action for the plaintiff, $48.00.
27th. Upon the twenty-seventh cause of action for the plaintiff, $3.00.
28th. Upon the twenty-eighth cause of action for the plaintiff, $4.80.
29th. Upon the twenty-ninth cause of action for the plaintiff, $21.00.
30th. Upon the thirtieth cause of action for the plaintiff, $89.58.
31st. Upon the thirty-first cause of action for the plaintiff, $10.00.

The court finds for the plaintiff in all the sum of $1,601.84, the same being double the amount of usurious interest paid by the plaintiff to the defendant and by the defendant taken and received upon usurious loans made by the defendant to the plaintiff, as
208 alleged in the above-mentioned causes of action.

The court further finds for the defendant upon the 17th, 18th, 21st, 22nd, and 26th causes of action.

(Signed) WILLIAM MARSHALL, *Judge.*"

As to the request made on the part of the defendant as to questions of fact and conclusions of law, the court finds as to questions of fact as follows:

"1st. As to the first request, that the amended petition was filed January 11th, 1889, but that the same does not set up new causes of action; it only separately states and numbers the causes of action set up in the first or original petition except the 5th cause of action, which was by the plaintiff withdrawn.

2nd. That the payments of interest set upon the 7th and 9th causes of action were made at the time of the final payment of the sums borrowed on which such judgments of interest were made.

3d. That the payments of interest upon the 5th, 16th, 25th, and

28th causes of action were paid under and in pursuance of the extended original agreement to pay such interest.

4th. That upon the 17th, 18th, 21st, 22nd, and 26th causes of action the loans therein set out were made by Sumner Bros. and not by the defendant bank.

5th. That upon the 9th cause of action the loan therein set out was made by the defendant to the plaintiff and not to Bollong & Co.

As to the conclusions of law the court finds as follows:

1st. That this action, including all the causes of action embraced in the plaintiff's petition (except the 5th), are to be regarded as commenced at the date of the summons served upon the defendant.

2nd. That the 7th and 9th causes of action were not barred by the two-years statute of limitations applicable to this class of actions.

209 3rd. That the interest paid upon the 5th, 16th, 25th, and 28th causes of action were paid upon the clearly implied extension of the original agreement to pay such interest.

4th. That the interest paid upon the 17th, 18th, 21st, 22nd, and 26th causes of action being paid to Sumner Bros. for a loan of their money, the defendant is not liable therefor.

5th. That the allegations of the amended petition, except as to the 5th, 17th, 18th, 21st, and 26th causes of action, are sustained by sufficient evidence."

The questions of law involved in this case were decided in Schuyler National Bank *v.* Bollong, 24 Nebraska, 821 and 825, and need not be repeated here.

The findings of fact appear to be amply sustained by the evidence. In fact the officers of the bank testified frankly and, so far as we can judge, truthfully in regard to all these transactions, and the findings are mainly predicated upon their testimony.

There is no error in the judgment, and the judgment is affirmed.

Affirmed.

The other judges concur.

210 And afterwards, to wit, on the 14th day of May, 1891, there was filed in the office of the clerk of said court a certain assignment of errors in words and figures following, to wit:

211 In the Supreme Court of Nebraska.

THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, Plaintiff in Error.
vs.
HECTOR C. BOLLONG, Defendant in Error.
} Assignment of Errors.

The plaintiff in error assigns and sets fourth the following assignment of errors, which it intends to assert and urge upon the hearing of this action in the Supreme Court of the United States:

First. That the court erred in overruling the motion of the plaintiff in error to strike the alleged amended petition from the files of

the court for that the court had no authority to allow the said alleged amendments, and that each and every cause of action stated in said amended petition is a new and different cause of action than that stated in the alleged original petition filed herein, and that the same were each and every one of them barred at the time of the commencement of this action and the filing of the said amended petition herein and *at* the appearance thereto by the said plaintiff in error.

Second. That the court erred in overruling the plaintiff in error's motion to dismiss for want of jurisdiction to try and determine the subject-matter of said action.

Third. That there is error in the assessment of the amount of the recovery in this, to wit, that the court permitted the plaintiff to recover twice the full amount of interest found to have been paid by the defendant in error and others to the plaintiff in error, whereas he was only entitled to recover, if at all, twice the amount paid in excess of the legal rate of interest within two years
212 of the commencement of the action.

Fourth. That the court erred in admitting any evidence to sustain the allegations of the said amended petition, for the said amended petition does not state facts sufficient to constitute a cause of action.

Fifth. That the court erred in admitting any evidence over the objections of the plaintiff in error thereto under the several alleged causes of action in said amended petition, since each and every one of said causes of action were, at the time of the filing of said alleged amended petitions and the entry of appearance thereto by the plaintiff in error, and at the commencement of this action the said original paper-writing filed herein entirely failing to state any cause of action whatever, barred by the statute under which they were brought, to wit, section 5198 of the Revised Statutes of the United States.

Sixth. That the court erred in permitting the defendant in error to recover under the seventh cause of action in said alleged amended petition stated, since the same was barred before the commencement of this action by statute under which said action was brought, to wit, sections 5197 and 5198 of the Revised Statutes of the United States, and that the same did not accrue to the defendant in error alone, but to him and one Neil Bollong, now living.

Seventh. That the court erred in permitting the defendant in error to recover under the first, seventh, eighth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, nineteenth, twentieth, twenty-third, twenty-fourth, and twenty-fifth causes of action set forth in said amended petition because the same did not accrue to the defendant in error alone, but to him and one Neil Bollong, now living.
213 Eighth. That the court erred in permitting the defendant in error to recover under the second, third, fourth, fifth, sixth, ninth, tenth, and eleventh causes of action set forth in said alleged amended petition because said causes of action did not accrue to this defendant in error alone, but to him and one Thomas L. Palmer, now living.

Ninth. That the court erred in permitting the defendant in error to recover under the twenty-ninth cause of action set fourth in the defendant in error's amended petition because said cause of action did not accrue to the defendant in error alone, but to him and one Neil R. Bollong, who is still living.

Tenth. That the court erred in permitting the defendant in error to recover under the thirtieth cause of action set forth in said alleged amended petition because said cause of action did not accrue to the defendant in error alone, but to him and Thomas L. Palmer and Neil R. Bollong jointly, who are still living.

Eleventh. That the court erred in permitting the defendant in error to recover under the sixteenth, twenty-fifth, twenty-eighth, and thirty-first causes of action in said alleged amended petition
214 stated because the said sums therein alleged to have been paid as interest on the loans therein mentioned were not paid in pursuance of any previous agreement so to do, nor were the same paid or taken for the forbearance of a debt or sum of money due.

Twelfth. That the court erred in refusing to find the first, second, third, fifth, and sixth conclusions of law requested by the plaintiff in error as set forth in said requests and in finding the conclusions of law set fourth in the second, third, and fifth conclusions of law filed herein by said court.

Thirteenth. That the court erred in refusing to find the first, second, third, and fifth requests for conclusions of fact in said plaintiff in error's request for such findings as therein asked for and in making the findings of fact herein made in pursuance of such requests.

Fourteenth. Errors of law occurring at the trial and duly excepted to.

Fifteenth. That the findings and decision of the court herein are — sustained by sufficient evidence and are against the clear weight thereof.

Sixteenth. That findings and decision of the court herein are contrary to law.

Sixteenth. That the court erred in finding that allegations of said amended petition are sustained by sufficient evidence.

Seventeenth. That the court erred in overruling the motion for a new trial made by the plaintiff in error.

THE SCHUYLER NATIONAL BANK
OF SCHUYLER, NEBRASKA,
By its att'y, E. T. HODSDON.

(Endorsed:) 4026. Supreme court of Nebraska. The Schuyler National Bank of Schuyler, Neb., *vs.* Hector C. Bollong. Assignment of errors. Supreme court of Neb. Filed May 14, 1891. D. A. Campbell, clerk. E. T. Hodsdon, att'y.

215 And afterwards, to wit, on the 3rd day of June, 1891, there was filed in the office of the clerk of said supreme court of Nebraska a writ of error in said cause from the Supreme Court of the United States; also an appeal bond in the sum of $3,200; which said bond is in words and figures as follows, to wit:

216 Know all men by these presents that we, the Schuyler National Bank of Schuyler, Nebraska, and William H. Sumner and Martin L. Weaver, in the county of Colfax and State of Nebraska, are held and firmly bound unto Hector C. Bollong, of Schuyler, Colfax county, Nebraska, in the full and just sum of thirty-two hundred dollars ($3,200), to be paid to the said Hector C. Bollong, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 22nd day of May, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a term of the district court held in and for Colfax county, in the State of Nebraska, in a suit pending in said court, a judgment was rendered against the said Schuyler National Bank of Schuyler, Nebraska, in the sum of sixteen hundred and one dollars and eighty-four cents ($1,601.84) and costs, and subsequently said suit was taken by a proceeding in error to the supreme court of the State of Nebraska, and after being there duly heard said judgment was in all respects duly affirmed in said supreme court and a final judgment was therein rendered for said sum of sixteen hundred and one dollars and eighty-four cents (1,601.84) and costs, and the said bank obtained an allowance of a writ of error by order of the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, to reverse said judgment in the aforesaid suit, — a citation directed to the said Hector C. Bollong, citing and admonishing him to be and appear at a Supreme
217 Court of the United States to be holden at Washington on the second Monday in October next:

Now, the condition of the above obligation is such that if the said Schuyler National Bank of Schuyler, Nebraska, and William H. Sumner and Martin L. Weaver shall prosecute the writ of error to effect and answer all damages and costs and pay said judgment if it fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

THE SCHUYLER NATIONAL BANK,
By W. H. SUMNER, *Pres't.*
WM. H. SUMNER.
MARTIN L. WEAVER.

In the presence of—
E. L. TRUE.

Approved May 26, 1891.

DAVID J. BREWER, *Justice.*

THE STATE OF NEBRASKA, } ss:
Colfax County, }

William H. Sumner and Martin L. Weaver, each being duly sworn according to law, each for himself upon his own oath deposes and says that he is a resident of Schuyler, Colfax county, Nebraska;

that he is the owner of real estate in said Colfax county, State of Nebraska, of the value of five thousand dollars, and he is also the owner of personal property situated in said county and State of the value of five thousand dollars, and that he is worth over and above all liabilities and exemptions the sum of ten thousand dol-
218 lars; and further deponents say not.

WM. H. SUMNER.
MARTIN L. WEAVER.

Subscribed in my presence and sworn to before me this 22d day of May, A. D. 1891.

EDW'D T. HODSDON,
Notary Public. [SEAL.]

(Endorsed:) 4026. Schuyler National Bank *v.* Hector C. Bollong. Bond. Supreme court of Nebraska. Filed Jun- 3, 1891. D. A. Campbell, clerk.

219 STATE OF NEBRASKA, *ss:*

I, D. A. Campbell, clerk of the supreme court of the State of Nebraska, do hereby certify the foregoing is a full, true, and complete transcript of the record and proceedings in the case of The Schuyler National Bank of Schuyler, Nebraska, against Hector C. Bollong as fully as the same remains on file and of record in my office.

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of said court, at the city of Lincoln, this 20th day of June, A. D. 1891.

[Seal Supreme Court of Nebraska.]

D. A. CAMPBELL,
Clerk Supreme Court.

Endorsed on cover: Case No. 14,702. Nebraska supreme court. No. 518. The Schuyler National Bank of Schuyler, Nebraska, plaintiff in error, *vs.* Hector C. Bollong. Filed June 24th, 1891.

Office Supreme Court U. S.
FILED.
JUL 22 1893
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893. No. 518.

THE SCHUYLER NATIONAL BANK, OF SCHUYLER, NEBRASKA, PLAINTIFF IN ERROR,

vs.

HECTOR C. BOLLONG, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF NEBRASKA.

Brief of Plaintiff in Error.

WILLIAM TWOMBLY,
J. G. BIGELOW,
Attorneys for Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893. No. 518.

THE SCHUYLER NATIONAL BANK, OF SCHUYLER, NEBRASKA, PLAINTIFF IN ERROR,

vs.

HECTOR C. BOLLONG, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF NEBRASKA.

Brief of Plaintiff in Error.

On the 19th of March, 1887, the defendant in error filed his petition in the District Court of Colfax County, Nebraska, against the plaintiff in error (Rec., 120), and such proceedings were had thereon as that on writ of error by plaintiff in error to the Supreme Court of the State, the court below was reversed (Rec., 118), and the cause remanded for further proceedings.

And thereupon, on January 11, 1889, the defendant in error filed his amended petition (Rec., 7), whereby he seeks to recover of the plaintiff in error double the amount of sundry charges of alleged usurious interest. The complaint or petition contains thirty-one counts, and each is supposed to state a separate and independent cause of action. The

same averment is found in each of the several counts, namely:

> "That the said payment of interest so as aforesaid paid by plaintiff to defendant, and by defendant knowingly contracted for and received from the plaintiff, was at a greater rate of interest than is allowed by the laws of the State of Nebraska, * * * and was in violation of Section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action; and by the violation of the *said statutes* of the United States, the defendant became and is indebted to the plaintiff in the sum of $—, no part of which has been paid."

In every count the alleged usurious interest is charged to have been received in violation of Section 5198 of the Revised Statutes. No reference is made to Section 5197 of the Revised Statutes; nor is there any allegation that the rate of interest charged is greater than or different from that allowed by the laws of Nebraska "for banks of issue organized under" her laws. There is no averment that the sum demanded in each count is "twice the amount of interest" taken, received, reserved or charged by the plaintiff in error, upon the particular cause of action undertaken to be set out. This is left for the court to figure out.

In the first six counts, the defendant in error, after alleging that the plaintiff in error had exacted and received a higher rate of interest than that allowed by the laws of the State, "in violation of Section 5198, Revised Statutes," concludes with the words: "By the violation of *said statutes* of the United States," the defendant became indebted, etc., using the plural form, "*statutes*," as referring to Section 5198. In the seventh count the singular number, "*statute*," is employed in a like reference. The singular number, "*statute*," is, with like reference, also used in counts seventeen, twenty-three, twenty-four, thirty and thirty-one. In the remaining counts, the plural number, "*statutes*," is used

in referring to the same section. In the twenty-sixth count Section *6198*, Revised Statutes, is mentioned as having been violated; but this is probably a typographical error, 5198 being intended.

On the 18th October, 1889, the cause came to a hearing, and a jury being waived, a trial was had by the court (Rec., 23). The defendant in error withdrew his fifth cause of action, and the parties took their evidence as to all the other counts (Rec., 32 to 118).

On the 16th November, 1889, the court announced its decision on the law and findings on the facts (Rec., 25 and 26). The court found in favor of the defendant in error in all the stated causes of action, except the seventeenth, eighteenth, twenty-first, twenty-second and twenty-sixth, in which the court found for the plaintiff in error, and found for the defendant in error in all for $1,601.84 (Rec., 26). And on the same day the plaintiff in error filed a number of exceptions to the findings of the court, all of which were overruled. And thereupon the plaintiff in error moved the court for a new trial for alleged errors committed at the trial, which was also overruled; and the court gave judgment for the defendant in error in the said sum of $1,601.84 (Rec., 27 to 31). To all of which the plaintiff in error excepted.

Afterwards, the plaintiff in error sued out a writ of error to the Supreme Court of the State, and on the 6th May, 1891, the judgment of the District Court was affirmed (Rec., 130). The plaintiff in error thereupon petitioned for and obtained a writ of error to this court (Rec., 1).

There were many objections and exceptions made and reserved at the trial and in the other proceedings had in this cause, which are not noticed herein, for the reason that, in our view of the law, the defendant in error has not stated a case to entitle him to a judgment under the laws of the Congress of the United States, Sections 5197 and 5198, Revised Statutes United States, the former prescribing the

limitation upon the rate of interest that may be taken by a national bank, and containing the prohibition against usury, and the latter providing a penalty against the violation of the prohibition of the former, and how that penalty may be enforced. The errors we complain of here are apparent upon the face of the pleadings.

Assignment of Errors.

I.

The complaint of the plaintiff below is fatally defective in that it contains no averment negativing the exception of Section 5197, Revised Statutes United States, viz: "except that where by the laws of any State a different rate is limited for banks of issue organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this Title."

II.

The complaint of the plaintiff below contains no allegation of the rate of interest allowed, in any case, by the laws of the State of Nebraska. Without such allegation, the averment that the interest charged by the defendant below "was at a rate of interest greater than is allowed by the laws of the State of Nebraska," is wholly insufficient to support this action under said Section 5197.

III.

That the supposed causes of action are alleged to have accrued to the plaintiff below by force of Section 5198 of the Revised Statutes United States; whereas the same accrued, if at all, under and by force of Sections 5197 and 5198 of the Revised Statutes, and not by force alone of Section 5198, as alleged.

IV.

That there is a fatal variance between the allegations of the complaint of the plaintiff below and the requirements of the said sections of the Revised Statutes.

V.

That there is no allegation in either of the counts or causes of action to the petition that the indebtedness of the plaintiff below to the bank, as therein specified, has been paid; and for aught alleged the several transactions complained of are still *in fieri*.

VI.

That there are other manifest and fatal errors appearing on the face of the petition of the plaintiff below that will be specified in the argument.

Argument.

1. The statutes that govern the rights of the parties to this suit are the following sections of the Revised Statutes of the United States:

> SEC. 5197. Any association may take, receive, reserve and charge on any loan or discount made, or upon any note, bill of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or district where the bank is located, and no more, *except that where by the laws of any State a different rate is limited for banks of issue organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this title.* When no rate is fixed by the laws of the State, or Territory, or district, the bank may take, receive, reserve or charge a rate not exceeding seven per centum, and such interest may be taken in advance, reckoning the days for

which the note, bill or other evidence of debt has to run. And the purchase, discount or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount or sale, at not more than the current rate of exchange for sight-drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

SEC. 5198. The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same: provided such action is commenced within two years from the time the usurious transaction occurred. [That suits, actions or proceedings against any association under this title may be had in any circuit, district or territorial court of the United States, held within the district in which such association may be established, or in any State, county or municipal court in the county or city in which said association is located, having jurisdiction in similar cases.]

These two sections were carved out of Section 30 of the Act of June 3, 1864 (13 Stat. at L., 99), the provisions being somewhat re-arranged.

This court, having Section 30 of the Act of June, 1864, before it for exposition, and speaking through Mr. Justice Swayne, said:

> "No searching analysis is necessary to eliminate the several provisions of the section to be considered to develop the true meaning of each, and to draw the proper conclusions from all of them taken together.

"1. The rate of interest chargeable by each bank is to be that allowed by the law of the State or Territory where the bank is situated.

"2. When, by the laws of the State or Territory, a different rate is limited for banks of issue organized under the local laws, the rate so limited is allowed for the national banks.

"3. Where no rate of interest is fixed by the laws of the State or Territory, the national banks may charge a rate not exceeding seven per cent. per annum.

"4. Such interest may be reserved or taken in advance.

"5. Knowingly reserving, receiving or charging a rate of interest greater than aforesaid shall be held and adjudged a forfeiture of the interest which the note, bill or evidence of debt carries with it, or which has been agreed to be paid thereon.

"6. If a greater rate has been paid, twice the amount so paid may be recovered back, provided suit be brought within two years from the time the usurious transaction occurred.

"7. The purchase, discount or sale of a bill of exchange, payable at another place, at not more than the current rate of exchange on sight drafts, in addition to the interest, shall not be considered as taking or reserving a greater rate of interest than that permitted."

Farmers' &c., Bank *vs.* Dearing, 91 U. S., 29.

The second provision, as therein specified, is found in the exception to Section 5197, and which permits national banks to exact and receive the same rate of interest as allowed by the laws of the State to banks of issue under local laws. The first assignment of errors is that the declaration is fatally defective because it contains no allegation negativing the exception; that is, it contains no averment that the laws of the State of Nebraska do *not* allow to banks of issue organized under her laws the rate of interest charged by the defendant below.

The general allegation that the rate of interest charged

"was at a greater rate of interest than is allowed by the laws of the State of Nebraska," is fatally bad in a declaration upon a penal statute containing an exception as above.

There is a well known distinction between an exception in the purview of an act and a proviso. In Voorhees *vs.* Bank of U. S., 10 Pet., 471, this court said:

> "A proviso in deeds or laws is a limitation or exception to a grant made or authority conferred, the effect of which is to declare that the one shall not operate or the other be exercised unless in the case provided."

In Wayman *vs.* Southard, 10 Wheat., 30, Chief Justice Marshall, speaking for the court, said:

> "The proviso is generally intended to restrain the enacting clause, and to except something which would otherwise have been within it, or in some measure to modify the enacting clause."

Whereas, an exception in the enacting clause of a statute is an exclusion of its provisions from a case falling within the terms of the exception, and must, therefore, be negatived in the pleading; and this requirement applies equally as well to a civil action on a statute to recover a penalty as to a criminal indictment.

In the great case of Spiers *vs.* Parker, 1 T. R., 141, this requirement of the law was strictly enforced. The syllabus is:

> "The exceptions in the enacting clause of a statute which enacts an offense and gives a penalty, must be negatived by the plaintiff in his declaration. Not so where it is by a subsequent proviso. In debt on 19 Geo. 2, C. 30, for penalty of fifty pounds for impressing a mariner in the West India trade, the declaration must aver that he had not deserted from *any* of his Majesty's ships of war. Nothing is to be presumed after verdict but what is expressly stated in the declaration, or what is necessarily implied from those facts which are stated."

The exceptions in the Act of Parliament specified a number of ships, or different kinds of ships, and deserters from "any such ship" might be lawfully impressed into the service. The defendant below was the captain in command of the warship Diamond. The declaration undertook to negative the exceptions by alleging that the mariner was not a deserter from the "war-ship called the Diamond." But the court held that the words, "any such ship," must be taken in connection with what went before, and when so taken meant "ships," such as specified in the exceptions, and that the declaration was fatally defective in that it failed to negative all the exceptions by alleging the mariner was not a deserter from *any* of his Majesty's ships.

This case has often been referred to both in England and this country with approbation. It is cited as a convincing authority by the Supreme Court of Massachusetts, in the case of Williams *vs.* Hingham & Quincy Bridge and Turnpike Company, 4 Pick., 341, in which a large number of cases, both English and American, are cited.

The case of Soper *vs.* The President, &c., of Harvard College, 1 Pick., 177, is another exemplification of the same principle—the necessity of negativing the exception of a penal statute by proper averment in the declaration.

The underlying principle is well stated by Chief Justice Parsons in Downe *vs.* Simpson, 2 Mass., 444, in these words:

> "It is a uniform rule of law, that where a statute gives a remedy under particular circumstances, the party seeking the remedy should in his plaint or information allege all the facts necessary to bring him within the statute."

To the same effect are numerous cases:

Bigelow *vs.* Johnston, 13 Johns., 428.
Bartlett *vs.* Crozier, 17 Johns., 456.
Sheldon *vs.* Clark, 1 Johns., 513.
Bennett *vs.* Hurd, 3 Johns., 438.
Tell *vs.* Fonda, 4 Johns., 304.
Hart *vs.* Cleis, 8 Johns., 41.
Smith *vs.* United States, 1 Gallison, 261.

The rule is stated in 1 Chitty on Pleading, at marginal page 223, in these words:

> "In pleading upon statutes, where there is an exception in the enacting clause, the plaintiff must show that the defendant is not within the exception, but if there be an exception in a subsequent clause, that is matter of defense, and the other party must show it to exempt himself from the penalty."

See also 1 Chitty on Pleading, 371 and 372, subject of pleading "on statute."

The case of Barnet *vs.* The Muncie National Bank, 98 U. S., 555, is one of great importance in fixing and settling the rights of the parties to the suit at bar. In that case the bank brought suit on a bill of exchange for $4,000 in the Common Pleas of Preble County, Ohio. The case was removed to the Circuit Court of the United States for that district. There were three defenses, of which the third was:

> "That fifty-one bills of exchange of $4,000 each, having 90 days to run, were discounted by the bank for the assignors, the first bearing date March 27, 1872, and the last, July 27, 1873 (the date of each one is given); that illegal interest was taken upon these bills to the amount of $6,324, and that the assignees are entitled to recover double this sum from the bank, to wit, $12,648. There is a prayer for judgment accordingly, and for other proper relief" (p. 555).

The bank demurred to these defenses, and the demurrer was sustained as to the first and third and overruled as to the second. On the latter the plaintiff took issue, and the case was tried by a jury and a verdict of $4,080.31 was returned for the bank, and judgment accordingly. The case was then taken to this court on writ of error, where the judgment of the Circuit Court was affirmed, this court holding and ruling:

> "(1) Where a statute creates a new right or offense and provides a specific remedy or punishment, they alone apply. Such provisions are exclusive.
>
> "(2) The payment of usurious interest to a national bank cannot be set up as an offset or defense in an action brought by it on a bill of exchange.
>
> "(3) The remedy given by the statute for usury in such case is a penal suit. To that the party aggrieved or his legal representatives must resort. He can have redress in no other mode or form of procedure."

And in this connection we refer again to The Farmers' and Mechanics' National Bank *vs.* Dearing, 91 U. S., 29, in which this court, reversing the Court of Appeals of New York, held:

> "(1) The State can exercise no control over national banks, nor in anywise affect their operations, except in so far as Congress may see proper to permit.
>
> "(2) The discount of a note by a national bank at a greater rate of interest than is allowed by the statute of the State where such bank is located does not render it liable to the penalty for usury provided by the State statute.
>
> "(3) Such bank is entitled to recover the principal of the note, less the amount of the interest unlawfully reserved."

These cases establish that Sections 5197 and 5198 of the Revised Statutes United States, constitute the law of this case, and that if the plaintiff below is entitled to recover at all, he must make out his right to relief under their provisions. What rate of interest the laws of Nebraska allow generally, or within the exception of Section 5197, is a fact that must be specially pleaded in this action before the court can judicially take cognizance of the same. It is not the business nor the duty of the court to search the statutes of any State in an action of debt to recover the penalty provided in Section 5198, to see whether the plaintiff has,

in and by his declaration, complaint, or petition possibly stated a case. It is the business of the plaintiff in such action to set out the rate of interest allowed by the laws of the State, and reference to the same, where they may be found, and to specify what rate is allowed by such laws within the exception of Section 5197 in question, and where such also may be found. In this case the court cannot take judicial notice of the laws of Nebraska prescribing the lawful rate of interest. On the contrary, in the absence of a specific averment of what that lawful rate is, the presumption is the defendant below charged a lawful rate of interest; the law presumes innocence. And the averment that a certain rate of interest "is greater than is allowed by the laws of the State of Nebraska," is not an allegation of the lawful rate of interest allowed by the laws of that State. For aught that appears in either of the thirty-one counts to the petition, the defendant below charged and received the rate of interest allowed by the laws of Nebraska *to banks of issue organized under her laws*, and the presumption is that it is so.

Pointing out some of the numerous defects of the petition, some of which are fatal, and some possibly were *cured* by the intendment of the law after verdict, we call attention to the fact that in all the petition there is no allegation where either of the notes declared upon is made and dated, to whose order payable, when payable, or at what place payable. And so far as the declaration informs us each of the promissory notes, undertaken therein to be described, may have been payable at the Bank of England. There is no averment that the amount demanded in each count is twice or double the sum of the usurious interest exacted and received by the defendant below, if such usurious interest was ever exacted.

So long as law and sound reason shall govern, we submit such slip-shod pleading as this upon a penal statute for the recovery of the penalty thereby denounced can never

sustain or justify a judgment of forfeiture. The law is against forfeitures.

2. The third and fourth assignments of errors are considered together, since the fourth is but a deduction from the third.

The third assignment of errors is, that the supposed causes of action are alleged to have accrued to the plaintiff below by force of Section 5198 of the Revised Statutes; whereas the same accrued, if at all, by force of Sections 5197 and 5198 together, and not by Section 5198 alone.

In every count to the petition the usurious interest is alleged to have been charged and received by the defendant below "in violation of Section 5198 of the Revised Statutes of the United States." But when we come to examine the statutes themselves, we find the prohibition against usury in Section 5197, while Section 5198 provides the penalty for such violation. Plainly then, the *charging* and *receiving* usurious interest is a violation of Section 5197 and not a violation of Section 5198, as alleged. Section 5198 is both penal and remedial, while Section 5197 is prohibitory. Of course, every penal statute implies *prohibition* against the thing or act denounced. But here we have the prohibition in one section, and the penalty provided for in the other, which may properly be designated the *remedial* section of the law. To the latter alone the plaintiff below refers. Upon it alone he predicates his complaint. No reference whatever is made to Section 5197 in the petition. And this constitutes the third assignment of errors.

The very question thus raised was raised by a like assignment of errors in Lee v. Clark, 2 East., 333. Lord Chief Justice Ellenborough delivering the opinion and decision of the court, and addressing himself to this very assignment, quoting and adopting the language of Justice Warburton, in Owen, 135, said :

> "If a statute doth prohibit a thing, and another statute gives a penalty; there upon an information upon the penalty, both statutes ought to be recited and to conclude *contra formam statutorum*."
>
> Page 339.

We do not insist that a declaration on a penal statute to be valid must conclude *contra formam statuti*, or *contra formam statutorum*, as the case may be. There is more form in this than substance. The form has been abolished, but the *substance* is adhered to.

If the plaintiff below had referred to no section of the Revised Statutes as having been violated, but had simply alleged that the transactions complained of were in violation of the Revised Statutes of the United States "in such case made and provided," perhaps this would have been sufficient. But having undertaken to specify and point out the particular section of the Revised Statutes as having been violated, he must be held to this averment in his declaration or petition. He cannot declare upon one section of the Revised Statutes and recover upon another. In this we only insist upon the application of the ordinary rule of law.

In 1 Chitty on Pleading at page 215 it is stated:

> "If, however, an offense be created by a statute, and a penalty be inflicted, the mere statement of the facts constituting the offense will be insufficient, for there must be an express reference to the statute, as by the words 'contrary to the form of the statute, etc.,' in order that it may appear that the plaintiff grounds his case upon and intends to bring it within the statute."

And, at page 372 it is said:

> "In a declaration on a public statute, it is not necessary or advisable to state the title or year of the reign when the statute was passed, or to recite any part of the act; and if it be *unnecessarily* stated, any *material variance* will be fatal, particularly if the declaration conclude against the form of the stat-

> ute aforesaid; and it would be fatal to describe a statute as made in 2 and 3 years of the reign of W. 4, though if stated to have been made in a *session holden* in the 2 and 3 years of the reign, it would have sufficed. *It is material, however, in all cases, that the offense or act charged to have been committed or omitted by the defendant, appears to have been within the provision of the statute, and all circumstances necessary to support the action must be alleged,* and the conclusion *contra forman statuti* will not aid the omission."

The cases in support of the law as thus laid down that are cited, are referred to, and called to the attention of the court.

"*Any material variance will be fatal.*" So run the authorities. If the plaintiff undertake to recite the statute, a misrecital will be fatal. Manifestly if the defendant below violated any section of the Revised Statutes, it was Section 5197 and not 5198, as recited by the complaint. Here is a fatal material variance, and for this reason alone we submit that this action cannot be maintained.

3. The fifth assignment of error is: That there is no allegation that the indebtedness of the plaintiff below to the bank, that is set out in the several causes of action undertaken to be stated in the petition, has ever been paid. On the contrary, the theory of the plaintiff below seems to have been and to be, that this action to recover double the amount of the usurious interest charged can be maintained while the usurious transaction complained of is still *in fieri*. But this is not the scheme of the law. No action can be maintained to recover twice the amount of usurious interest, under Section 5198, until the party complaining shall have first paid to the bank the principal indebtedness, and thus closed out the usurious transaction. Until this has been done, the statutes specify and afford another and different remedy, viz; the bank shall forfeit all interest. Interest is not "paid" within the plain meaning of these sections, until the debt due the bank has been actually paid and can-

celled. Before this, interest is "taken, received, reserved or charged," and not "paid," within the language and meaning of Section 5198. This court has put this question to rest by its opinion and decision in Barnet v. The Muncie National Bank, 98 U. S., 555, already referred to. Mr. Justice Swayne, delivering the opinion, and after reciting so much of Section 30, Act June 3, 1864, (13 Stat. at L., 99) as now constitutes said Section 5198 of the Revised Statutes, said:

> "Two categories are thus defined and the consequences denounced:
>
> "1. Where illegal interest has been knowingly stipulated for, but not paid, there only the sum lent without interest can be recovered.
>
> "2. Where such illegal interest has been paid, then twice the amount so paid can be recovered in a penal action of debt or suit in the nature of such action against the offending bank, brought by the persons paying the same or their legal representatives."
>
> Page 557.

The plaintiff below has clearly by the averments of his petition put himself in the first category as thus defined by this court. And it would be absurd to hold that a party who should get a note discounted, one day, by a national bank, at illegal interest, could, the very next day, and before paying the note, maintain his action to recover twice that illegal interest under said Section 5198. To entitle a plaintiff to recover in such case the penalty of twice the illegal interest as provided in this section, he must allege that he has settled with the bank, has paid his note or other evidence of indebtedness in full, and that there is nothing outstanding between them but this matter of illegal interest. The law requires strictness and accuracy in pleading on penal statutes. The plaintiff is bound to show, by his declaration or petition, that his case comes within the terms of the statute.

We submit that the question thus raised is conclusive of

this case, that the defendant in error cannot maintain this action; that he has by his own petition put himself out of court.

Again, there is no allegation to be found in the petition of the rate of interest the several promissory notes and other evidences of indebtedness, mentioned in the several counts called for, nor whether they called for any interest at all. The petition is by far more remarkable for the important matters and things, essential to the right of recovery, that are left unmentioned, than for any averments contained therein of material facts and circumstances to bring the case within the terms of the statutes.

None of the considerations herein presented to the court against the sufficiency of the complaint or petition of the plaintiff below, were called to the attention of the Supreme Court of Nebraska. On the contrary, that court considered the case as if the petition alleged all the essential facts and circumstances to bring it within the terms of Sections 5197 and 5198, Revised Statutes, U. S. And we think that if the objections and exceptions were made there, that we now make here, that court would have rendered a contrary decision. The case we present here is quite different from the case presented there. Courts cannot be expected to pass judgment upon a case other than as presented.

For the reasons that have been given, we respectfully submit that the plaintiff below did not state, in his petition, any valid cause of action against the bank, under Sections 5197 and 5198 of the Revised Statutes, that his complaint is fatally defective, and that the judgment of the Supreme Court of Nebraska ought to be reversed with instructions to enter up judgment for plaintiff in error, defendant below.

WILLIAM TWOMBLY,
J. G. BIGELOW,
Attorneys for Plaintiff in Error.

Office Supreme Court U. S.
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 518.

THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, Plaintiff in Error,

vs.

HECTOR C. BOLLONG.

In Error to the Supreme Court of Nebraska.

SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR ON THE QUESTION OF JURISDICTION OF THIS COURT.

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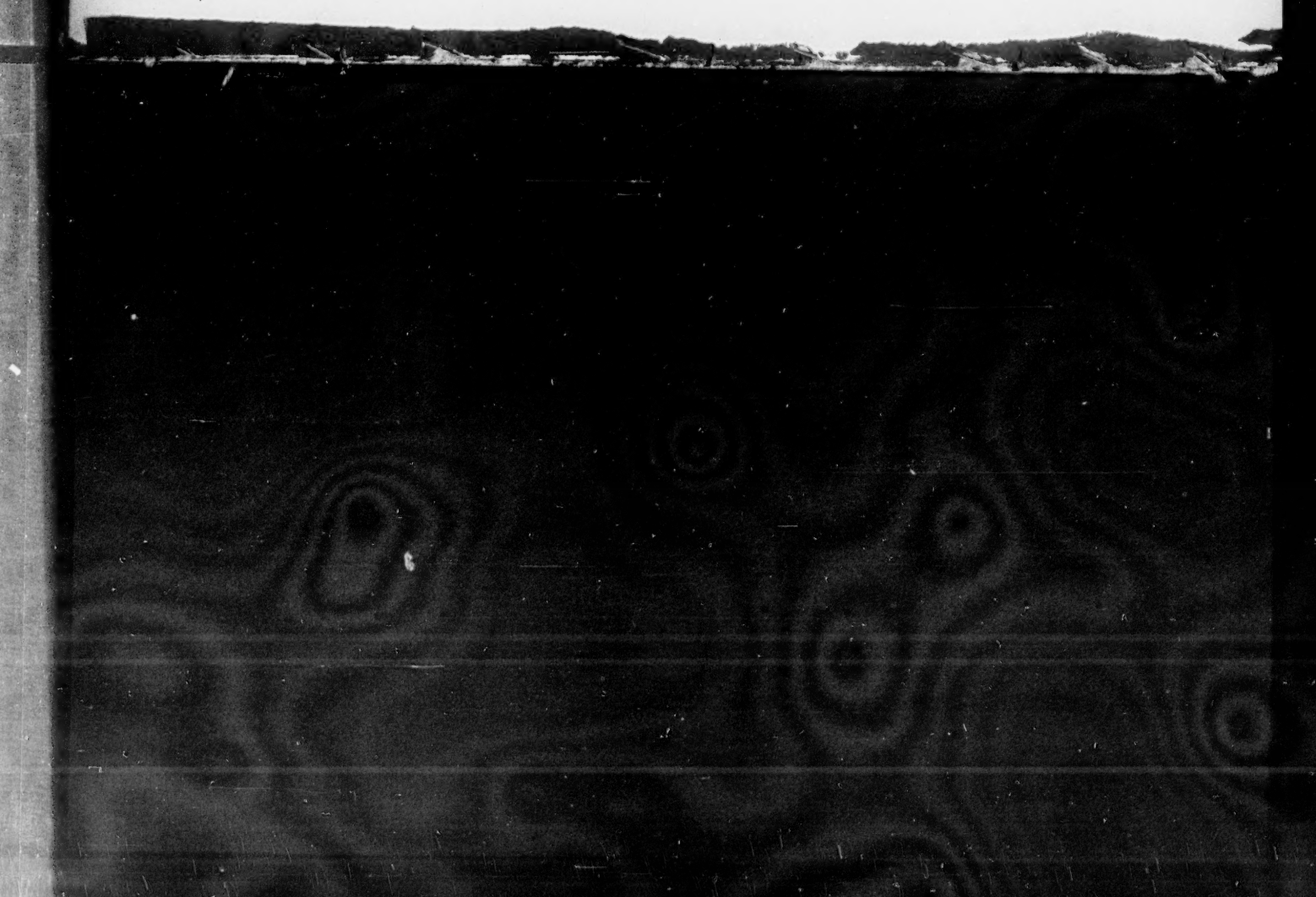

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By section 709, Revised Statutes of the United States, it is provided; "A final judgment or decree in any suit in "the highest court of a State, in which a decision in the "suit could be had * * * where any title, right, "privilege, or immunity is claimed under * * * any "* * * statute of the * * * United States, and "the decision is against the title, right, privilege, or im- "munity specially set up or claimed by either party under "such * * * statute * * * may be re-examined "and reversed or affirmed in the Supreme Court on writ of "error." And by the Third Article of the Constitution, "The judicial power of the United States shall be vested in one Supreme Court," &c.

The question is, Has this court jurisdiction of this cause on writ of error under the above provisions of the laws and the Constitution?

The claim of the bank is, and at every stage of the litigation has been, that the trial court had no jurisdiction, nor authority of law to pronounce judgment against it under the provisions of Sections 5197 and 5198 of the Revised Statutes, because of the failure of the plaintiff below to allege, in his petition, the necessary and material facts to give the trial court jurisdiction of the subject-matter of the complaint, or authority to pronounce any judgment against it. In other words, the bank claimed and now claims the very sections of the Revised Statutes, upon which the suit is predicated, as its shield against the suit.

The bank defends by claiming the protection of the very law under which the action is ostensibly brought—by insisting it had the absolute right to do, under the authority of the statutes, the very matters and things alleged in the petition; that there is no fact alleged therein of any violation of the statutes nor of any fact from which the law can infer such violation.

Such claim and defense were made in the record, though the grounds are imperfectly stated.

The first step taken by the bank after the amended petition was filed was, in substance, a demurrer, though it is called a motion, and was to dismiss the action, and the first ground for the motion is; "That this court has no jurisdic-"tion to try and determine the subject-matter of the above-"entitled action," (R. 20) which was overruled and an exception noted.

After the cause was at issue, and had come on for trial, and at the very outset of the taking of evidence by the plaintiff below, the bank made the following objection:

"Defendant objects to the introduction of any evidence "under this petition on the ground that it does not state "grounds sufficient to constitute a cause of action." Overruled, and an exception. (R. 33.)

There were a number of other objections taken during the trial to the evidence of the plaintiff below which were overruled and exceptions taken.

After the court had announced its findings of the facts and conclusions of the law, the bank moved for a new trial on several grounds, the 5th of which was; "That the court erred in admitting any evidence to sustain the allegations of the amended petition, for that the said petition states (no) facts sufficient to constitute a cause of action" (R. 30), which motion was overruled and an exception taken.

Subsequently the bank petitioned the Supreme Court of the State for writ of error, and, among others, on the following grounds:

"Eighteenth. That the findings and decision of the court herein are contrary to law."

"Nineteenth. That the court erred in finding that the allegations of the said amended petition are sustained by sufficient evidence."

"Twentieth. That the court erred in overruling the motion for a new trial made by the plaintiff in error." (R. 6.)

Other and similar objections and claims were made in the course of the litigation by the bank as appears elsewhere in the record, which were overruled and disallowed, and exceptions taken.

It thus appears by the record that the bank *specially* set up and claimed the *title, right, privilege* and *immunity*, under said Sections 5197 and 5198 of the Revised Statutes, to be exempt from all liability to the defendant in error for any matter or thing alleged in his petition, and the decision of the court was against the *title, right, privilege* and *immunity* so set up. And this would seem to bring this case within the provisions of Section 709 above quoted.

Whether this would be sufficient to sustain the jurisdiction of this case might well be doubted if the test were

made by the vast majority of the multitude of decisions made by this court from 3 Dallas, 308, to this time, and the principles and requirements as therein laid down were applied.

But this case is, in principle, unlike the cases referred to. Here we have the case of the plaintiff and the defendant asserting respectively their legal rights in the controversy under the same laws of Congress, Sections 5197 and 5198, which are to the exclusion of all other law.

Barnet *vs.* The Munice National Bank, 98 U. S., 555.

And it would logically follow that, if the plaintiff below would have had a right to his writ of error to this court, in case the decision had been against him, the defendant ought to have the like right when the decision was against it. There are the most cogent reasons why this court should take jurisdiction, if the law will suffer it, for a most deplorable condition of things would exist if there should be as many different constructions and interpretations of the National Banking laws, including the two sections of the Revised Statutes in question, as there are States in the Union. Uniformity is needful in this respect.

Only a few cases have heretofore been before this court involving the question of jurisdiction in cases like the present, where both parties claim their rights under the same laws of Congress.

The first case reported is that of Matthew *vs.* Zane, 4 Cr., 382, which was a writ of error to the State Court of Ohio. Chief Justice Marshall delivered the opinion and decision of the court. The syallabus gives the whole case, namely: "If two citizens of the same State in a suit in a court of their State, claim title under the same act of Congress, this court has an appellate jurisdiction to revise and correct the judgment in that case." The opinion is brief and goes right to the point we are contending for. The Chief Justice invokes the Third Article of the Constitution in connection with the 25th section of the Judiciary Act of 1789, Vol. 1,

p. 63, (Section 709, R. S.,) and concludes: "It is supposed that the act intends to give this court the power of rendering uniform the construction of the laws of the United States, and the decisions upon rights or titles claimed under those laws."

Then follows the case of Buell *vs.* Van Ness, 8 Wheaton, 312, which was a writ of error to the Supreme Court of Vermont. Here, as in the preceding and following cases, both claimed under the same laws of the United States, and jurisdiction was sustained on that ground. In this case the court held either party has a right to appeal.

The next case we find reported involving the question under discussion is that of Ross *vs.* Barland, 1 Pet., 655, which was a writ of error to the Supreme Court of Mississippi. Both parties claimed title under the same law of Congress. On that ground this court held it had jurisdiction, following the cases in 4 Cranch and 8 Wheaton mentioned.

These cases have never been overruled, and we respectfully submit they are conclusive of the question of jurisdiction; that this court has jurisdiction of this cause, and that the writ of error was properly allowed to the Supreme Court of Nebraska, being the highest court of law in that State.

WILLIAM TWOMBLY,
J. G. BIGELOW,
Attorneys for Plaintiff in Error.

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IN THE

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OCTOBER TERM, 1893. NO. 518.

THE SCHUYLER NATIONAL BANK, OF SCHUYLER, NEBRASKA, PLAINTIFF IN ERROR,

v.

HECTOR C. BOLLONG, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF NEBRASKA.

Brief of Defendant in Error.

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IN THE

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IN ERROR TO THE SUPREME COURT OF NEBRASKA.

Brief of Defendant in Error.

The statement of the case made by the plaintiff in error is controverted.

On the 19th day of March, 1887, the defendant in error filed his original petition in this case in the District Court of Colfax County, Nebraska, against the plaintiff in error (Rec., 120).

On the 11th day of January, 1889, defendant by leave of the court, filed in said District Court his amended petition (Rec., 7) demanding judgment against plaintiff in error for double the amount of sundry charges of usurious interest theretofore exacted from him by the plaintiff in error.

On the 26th day of July, 1889, the plaintiff in error,

after the disposal of numerous dilatory motions interposed by plaintiff, the plaintiff in error filed its answer (Rec., 21) denying generally every allegation in defendant's petition.

Afterwards, and upon the trial of the issues, the court, upon consideration of the pleadings, proofs, and arguments of counsel entered the findings and judgment sought to be reversed in this suit in this court.

The defendant's said petition definitely states that the plaintiff in error is a corporation duly organized and doing business under and by virtue of the laws of Congress relating to national banks, at Schuyler in said Colfax County, as a banking association and was so organized and doing business during the happening of each and all the events and facts complained of in said petition. In each cause of action set out in said petition it is distinctly alleged, as the fact existed, that the defendant in error, on a certain day named, either borrowed, or, being indebted to the plaintiff in error, as the fact existed, in a specific amount named, executed a promissory note, of that date, therefor, due a certain number of days named thereafter; that on that day the plaintiff knowingly contracted for and retained, or received, as the fact was a specific sum of money named, as and for interest on the amount borrowed, or owing, for the time and term therein named; that the payment of interest made by defendant to plaintiff, and by plaintiff knowingly contracted for and received, was at a greater rate of interest than is allowed by the laws of Nebraska, stating the rate per annum contracted for and

paid, and that it was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years, prior to the commencement of the action, and by the violation of the statutes of the United States the plaintiff became and was indebted to defendant in a sum named, the amount so named being twice the amount of the unlawful interest so contracted for, received and paid. To say that this manner of demanding judgment for twice the amount of unlawful interest taken, upon the facts alleged, is to declare that pleading facts from which the material fact is inferred is not sufficient is a statement of the law of pleading sadly at variance with the law as generally understood.

The fifth assignment of error in plaintiff's brief, "that there is no allegation in either of the counts or causes of action to the petition that the indebtedness of the plaintiff below to the bank as therein specified, has been paid; and for aught alleged the several transactions complained of are still in fieri," certainly is made without carefully examining the record, for defendant's petition does specifically set out, not only the borrowing of certain sums named, the contracting for and, in the original borrowing, the retaining of a specific sum named being in excess of legal rates, but the petition clearly states that the unlawful rate so contracted for and retained was carried down through a series of renewal notes and finally paid, together with the principal sum of indebtedness. A perusal of the entire petition is necessary to ascertain this fact, but instances of such

payment of indebtedness are found in the 11th, 12th, and 30th causes of action (Rec., 11 and 18). And the evidence at pages 34, 36, 40, 41, 44, and 47 of the record shows, item by item, as alleged, it was paid.

The first error assigned by plaintiff in error in its brief is, "the complaint of the plaintiff below is fatally defective in that it contains no averment negativing the exception in section 5197 Revised Statutes United States, viz: 'except that where by the laws of any State a different rate is limited for banks of issue organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such state under this title.'"

There are no banks of issue "organized under State laws" in Nebraska. There is no State law in Nebraska authorizing such banks, and, of course, there is no provision in the laws of Nebraska providing a different rate of interest for banks of issue organized under State laws. Moreover, there is no rule of law in the code governing civil procedure and pleadings in Nebraska that either requires or recognizes as proper the pleading of either the existence or nonexistence of a statute of the State. The courts in Nebraska, as everywhere else, take judicial notice of the laws of the jurisdiction in which they sit.

Again, the provision in section 5197 "except that where by the laws of any State a different rate is limited for banks of issue organized under State laws the

rate so limited shall be allowed for associations organized or existing in any such State under this title," does not apply to states having no banks of issue, or laws regulating interest charges by such banks, and does not apply to national banks in Nebraska.

But as applied to Nebraska is simply a matter of law, of which the Nebraska court takes judicial notice, whereas in a state with such banks of issue as are included in said exception, it becomes a question of fact. And this view was held by the Supreme Court of North Carolina in Morgan v. First National Bank of Charlotte, 93 North Carolina, 352.

The 4th error assigned in plaintiff's brief is: "That there is a fatal variance between the allegations of the complaint of the plaintiff below and the requirement of said sections of the Revised Statutes."

The code of civil procedure of Nebraska governing pleading in actions at law both in the Federal and State courts in Nebraska provides: "No variance between the allegations in a pleading, and the proof is to be deemed material unless it have actually misled the adverse party, to his prejudice, in maintaining his action or defense upon the merits," and "Whenever the variance is not material, as provided (above) in the last section, the court may direct the fact to be found according to the evidence and may order an immediate amendment without costs," and further:

"SEC. 144. The court may, either before or after judgment,

in furtherance of justice, and on such terms as may be proper, amend any pleading, process, or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the facts proved. And whenever any proceeding taken by a party fails to conform in any respect to the provisions of this code, the court may permit the same to be made conformable thereto, by amendment."

Under this latter provision the Nebraska Supreme Court has ordered amendment to pleadings in cases appealed thereto.

In a suit for a statutory penalty at common law, if the necessary matters were stated in substance and effect it was sufficient, although the precise words of the statute were not used, 1 Chitty Pl. 372; Mitchell v. Clapp, 12 Cushing, 278.

The strict rules of common law pleading, however, do not apply.

Sec. 903 of the code provides that where the statute designates by name or otherwise the kind of action, as the one under consideration does, viz: "An action in the nature of an action of debt," but does not prescribe the mode of proceeding, and this does not, such action shall be commenced and prosecuted in conformity to the code.

The objections raised in plaintiff's brief in the first and fourth assignments of error are, however, fully met by the decision in the case of The First National Bank of Charlotte, North Carolina v. Morgan, 132 U. S., 141. From the printed record in that case, on file in this court, we copy the entire petition:

North Carolina, Cleveland County:

Superior Court. Fall Term, 1882.

E. A. Morgan

vs.

The First National Bank of Charlotte, N. C.

Complaint.

The plaintiff complaining, alleges for first cause of action:

I. That the defendant is a corporation doing a general banking business at Charlotte, N. C., created by and under the laws of the United States of America and the State of North Carolina, and known and doing business under the name and style of The First National Bank of Charlotte, North Carolina.

That the said defendant, The First National Bank of Charlotte, North Carolina, after the 12th day of February, 1877, and before the commencement of this suit, to wit, on the 25th day of May, 1877, in the city of Charlotte, N. C., upon a certain corrupt contract made after the 12th day of February, 1877, as aforesaid to wit, on the 25th day of May, 1877, in the city of Charlotte, North Carolina, aforesaid, between the said defendant, The 1st National Bank of Charlotte, N. C. on the one part, and the plaintiff upon the other part, the said defendant took, accepted, and received of and from the plaintiff on said 25th day of May, 1877, a certain sum of money, to wit, the sum of $222.48 by way of corrupt bargain and loan, for the said defendant for bearing and

giving and having forborne and given day to the said plaintiff for the payment of a certain sum of money, to wit, the sum of $1,854, on the said 25th day of May, 1877, lent and advanced by the defendant to the plaintiff from the said 25th day of May, 1877 until the 25th day of May, 1878, which said sum of $222.46, so taken, accepted, and received by the defendant from plaintiff, in manner, and for the cause aforesaid, exceeds the rate of eight dollars for the forbearance of one hundred dollars for one year, contrary to the form of the statute in such cases made and provided, whereby, and by force of the said statute the said defendant owes the said plaintiff the sum of $454.96, that being double the amount of interest paid to defendant by the plaintiff on the amount of money loaned to plaintiff by defendant as aforesaid, for the space of one year as aforesaid and so foreborne as aforesaid, and thereby and by force of the said statute an action has accrued to plaintiff to demand and have for himself in this behalf and from the defendant the said sum of $444.98.

II. For second cause of action plaintiff, complaining, alleges—

That the said defendant, after the 12th day of February, 1877, and before the commencement of this action, to-wit, 25th day of May, 1878, and at other times and dates subsequent thereto, in the city of Charlotte, N. C., upon certain corrupt and usurious contracts, made after the 12th day of February, 1877, as aforesaid, to wit, on the 25th day of May, 1878, and at other times and dates subsequent thereto, in the city of Charlotte, N. C., aforesaid, between the said defendant, on the one part, and the plaintiff, on the other part, took, accepted, and received of and from the plaintiff certain sums of money, amounting in all to the sum of $793.92, by way of corrupt bargain and loan, for the said defendant, forbearing and giving and having forborne and given day to the plaintiff for the payment of a certain sum of money, to wit, the sum of sixteen hundred and fifty-four dollars,

theretofore, to wit, on the 25th day of May, 1878, and at subsequent times and dates thereto, in the city of Charlotte, N. C., aforesaid, lent and advanced by the said defendant to the said plaintiff, said amount being lent and advanced by the defendant to the plaintiff for sixty days at a time, the whole time from the said 25th day of May, 1878, until the 13th day of June, 1882, the time named, was loaned plaintiff by defendant, being four years and eighteen days, which said sum of $793.92 so taken and accepted and received by the defendant of and from the plaintiff in the manner and for the cause stated as aforesaid exceeds the rate of $8 for the forbearance of $100 for one year, contrary to the form of the statute in such cases made and provided, whereby and by force of the said statute the said defendant forfeited and owes to plaintiff for said offense the sum of $1,587.84, that being double the amount of interest by plaintiff to defendant for the loan and forbearance of the sum of $1,654 from the 25th day of May, 1878, until the 13th day of June, 1882, and thereby and by force of the said statute an action hath accrued to the plaintiff against the defendant for the sum of $1,587.84, for which amount plaintiff sues.

III. For a third cause of action plaintiff complains and alleges that the defendant, after the 12th day of February, 1877, and before the commencement of this action, to wit, on the 25th day of May, 1877, in the city of Charlotte, N. C., upon a certain corrupt and usurious contract made after the 12th day of February, 1877, aforesaid, to wit, on the 25th day of May, 1877, in the city of Charlotte, N. C., aforesaid, between the defendant, on the one part, and the plaintiff, on the other part, took, accepted, and received of and from the plaintiff a certain sum of money, to wit, the sum of $60, by way of corrupt bargain and loan, for the said defendant forbearing and giving day and and having forborne and given day to the plaintiff for the payment of a certain sum of money, to wit, the sum of $1,000, on the said 25th day of May, 1877, until the 25th day of De-

cember, 1877, which, said sum of $60 so taken, accepted, and received by the defendant from the plaintiff in manner and for the causes aforesaid, exceeds the rate of $8 for one year, contrary to the statute in such cases made and provided, whereby and by force of the said statute the said defendant forfeited for said offense and owes to the plaintiff the sum of $120, that being double the amount of interest paid to defendant by plaintiff for the forbearance and loan of the $1,000 for the time as above alleged, and thereby and by force of the statute for usury an action hath accrued to plaintiff against the defendant for the sum of $120, which amount plaintiff claims and sues for.

IV. For fourth cause of action plaintiff, complaining, alleges that the said defendant, after the 12th day of February, 1877, and before the commencement of this action, to wit, on the 25th day of March, 1877, and at other times and dates subsequent thereto, in the city of Charlotte, N. C., upon certain corrupt and usurious agreements and contracts made after the 12th day of February, 1877, as aforesaid, to wit, on the 25th day March, 1878, — at other times and dates subsequent thereto, in the city of Charlotte, N. C., aforesaid, between the defendant, on the one part, and the plaintiff on the other part, took, accepted, and received from the plaintiff certain sums of money at various times, amounting in all to the sum of $377.98, by way of corrupt and usurious bargain and loan, for the said defendant forbearing and giving day to the plaintiff for the payment of $759 theretofore, to wit, on the 25th day of December, 1877, and at subsequent times and dates thereto, in the city of Charlotte, N. C., aforesaid, lent, and advanced to the plaintiff by the defendant, said amount being lent and advanced to the plaintiff by the defendant for sixty days at a time, the whole time from the 25th day of December, 1877, until the 19th day of June, 1882, when plaintiff quit paying usurious interest, being four years five months and twenty-four days, which said sum of $377.98, so taken, accepted, and received by the defendant of and

from the plaintiff, in the manner and for the cause stated as aforesaid, exceeds the rate of $8 for the forbearance of $100 for one year, contrary to the statute in such cases made and provided, whereby the defendant forfeited and owes to the plaintiff for said offense the sum of $755.96, that being double the amount of interest paid by the plaintiff to the defendant for the loan and forbearance of the sum of $759.00 from the 25th day of December, 1877, until the 19th day of June, 1882, and thereby and by force of the said statute an action hath accrued to plaintiff against the defendant for the sum — $755.96, for which amount plaintiff sues.

V. That the plaintiff, in addition to the usurious interest heretofore mentioned, has paid before the commencement of this action all the notes hereinbefore referred to and mentioned, except one note for $759.00 executed, and delivered to the defendant by plaintiff on the 19th day of April, 1882.

VI. That each and every one of the notes constituting the contract hereinbefore set forth were made payable on their face to one M. C. Roberts by plaintiff, and by said M. C. Roberts endorsed.

VII. That said notes so endorsed were received by the defendant as the contracts hereinbefore referred to.

VIII. That the manner of executing said contracts and said endorsements by said M. C. Roberts was in the knowledge and at the request of the defendant.

IX. That said M. C. Roberts received no benefit from said contracts and was only liable thereon as endorser, and bore none of the burdens of same and has no interest in this action.

X. That as to each cause of action hereinbefore set forth subsequent to the first the plaintiff hereby adopts, without repeating the same, the first allegation of the first cause of action. Wherefore the plaintiff demands judgment against the defendant for the sum of $3,000, with interest thereon until paid, and the costs of this action, and other and further relief.

And from the printed brief, on file in this court, of the plaintiff in error in that case it appears in the third assignment (page 7 of said brief) of errors that the same points raised by plaintiff in its first, second, and fourth assignments of error herein were raised, and by the court overruled. The assigament was:

> The complaint does not allege what is the legal interest fixed by the laws of the State, nor does it negative that there are State banks of issue, which by law are allowed a greater rate of interest than is allowed by the general law of the State.

In the last paragraph of the opinion in that case, Mr. Justice Harlan, speaking for the court, says:

> The objection that the complaint does not state facts sufficient to constitute a cause of action, under the act of Congress, is not well taken. It might have been more specific, but enough was alleged to justify the court in overruling the motion in arrest of judgment. The bank filed its answer, and went to trial upon the merits; and as the verdict embraces only illegal interest taken within the two years next preceding the commencement of the action, there is no ground to contend that the judgment exceeded the amount that Congress authorized to be recovered.
>
> Judgment affirmed.

The supreme court in its discision in that case say:

> The appellant's counsel further, in support of his motion in arrest of judgment, urges that the complaint is fatally defective in failing to "negative that there are State banks of issue which by law are allowed a greater rate of interest than is allowed by the general law of the State."
>
> It is to be observed that the complaint avers a taking of interest for a forbearance of a loan of money greater that at the

rate of 8 per centum per annum, and the court judicially takes notice of the fact that this is the maximum allowed by contract under the general law of the State, and that no banking institution incorporated by the State can legally take more.

Why was it necessary to make the averment that the highest legal rate allowed by law was that mentioned, or that no more could be demanded and taken by a State bank?

Each would have been a public law, and when the facts are stated which show its violation and the incurring the penal liability therefor this must be sufficient as a statement of a cause of action against the wrong-doer. It is not necessary, certainly, to say there is no law under which, if there was, the defendant can find shelter for its acts, when the court knows there is none.

It is not like the case of a statute, which is itself qualified by an exception resting upon facts, which facts must be negatived to bring the case under the operation of the law, as the court has had several times occasion to remark, in considering public criminal accusations, in arriving at its true meaning. Here the facts are set out which show that the law has been violated, and this being known to the court, relief will be granted and the wrong redressed.

Upon a full examination of the exceptions in the light of the able argument of counsel in support, we find and so declare that there is no error of which the appellant can complain, and the judgment must be affirmed. It is so ordered.

In Barnet v. Muncie National Bank, of Muncie, Indiana, 98 U. S., 855, Mr. Justice Swayne, speaking for the court, and of that case, commenced in one of the State courts of Ohio, said: "The procedure in this case after it reached the circuit court, as well as before, was governed by the Ohio code of practice" citing R. R. Co.

v. Horst, 93 U. S., 291:

That the statute under consideration is not strictly penal, but in its provisions remedial, will appear when the construction given it by the courts is considered. In Monongahelia National Bank vs. Overholt, 96 Pa. St., 329, the court says, "that the sum so recovered is so penal in character that it is commonly called a penalty; but is not the act in strictness more remedial than penal? Taking interest beyond the prescribed rates is not a criminal offense; does not forfeit the debt or give a qui tam action to an informer, is not denounced by pains and penalties as was usury by the common law of ancient statutes; nor is the right to the person who paid the excessive interest, for it may pass to his legal representatives, and in this respect it is not treated as a penalty or tort to the person. He may recover back twice the amount so paid by an action in the nature of an action of debt. And in Bank vs. Dearing, 91 U. S., 29, the court says " that the 30th section, " referring to this act under consideration, " is remedial as well as penal and is to be liberally construed to effect the object which Congress had in view in enacting it, " citing Gray vs. Bennet, 3 Met. 522-529.

In Lebanon National Bank vs. Karmony, 98 Pa. St., 65, it was held that Sec. 5198 U. S. Rev. Stat. is purely remedial.

And to the same effect see Huntington v. Attrill, 146 U. S., 657-689.

The third error assigned in plaintiff's brief is: "That the supposed causes of action are alleged to have accrued to the plaintiff below by force of section 5198 of the Revised Statutes United States, whereas the same accrued, if at all, under and by force of sections 5197 and 5198 of the Revised Statutes, and not by force alone

of section 5198, as alleged.

In plaintiff's printed brief, at page 13, counsel considers his third and fourth assignment of errors together, and while admitting that the former strict form of pleading has been abolished and the substance only retained, he proceeds to complain of the form only.

The allegation: "That said payment of interest so as aforesaid paid by plaintiff to defendant and by defendant knowingly contracted for and received was at a greater rate of interest than is allowed by the laws of the State of Nebraska and was at the rate of 18 per cent per annum, and was in violation of section 5198 of the Revised Statutes of the United States, corrupt and usurious, and occurred within two years prior to the commencement of this action, and by the violation of said statutes of the United States the defendant became and is indebted to the plaintiff in the sum &c.," is certainly sufficient. If the words "in violation of section 5198" had been omitted, or are treated as surplussage the words "corrupt and usurious" are sufficient, or the words "in violation of the statutes of the United States" are also sufficient.

This action was brought under and by virtue of the remedy secured in section 5198, and not in section 5197. The acts and facts charged in the petition brings the case within the conditions condemned in section 5197, but there is no requirement that more than the facts

shall be pleaded. There was no necessity for a reference to the section where such acts are condemned, nor, for that matter, to section 5198, which gives the remedy. Section 5197 provides what rate may be charged but does not declare the penalty, nor provide the remedy, that is left for section 5198, and there it is found.

Again, section 5198 itself refers to section 5197, in the following words: "The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section, when knowingly done etc.," so that the reference in the petition to section 5198, directs attention to the restrictions contained in section 5197, both of which formerly were contained in section 30 of the act of June 30, 1864.

The averment, in the complaint attacked, that the interest charged, contracted for, paid and received "was at a greater rate of interest than is allowed by the laws of the state of Nebraska, is a comprehensive allegation, following as near as may be the language of the statute, and positively negatives the exception contained in section 5,197, and embraces every limit fixed, or which could be determined by legislation on the subject of limiting the rate of interest in the state of Nebraska, either directly, or, in provisions excepting persons or corporations, seems to be "one of those plain propositions which reason can not render plainer."

But, if to maintain the suit, it were necessary that the

pleading, having referred to section 5198, should also refer to section 5197, then are we not without that prop, for in the answer to said complaint, the plaintiff in error supplies the defect, if defect it be, by pleading the exact language in question, and says (Rec., 21), "as provided by sections 5197 and 5198 of the Resvised Statutes of the United States, UNDER WHICH SAID CAUSES OF ACTION ARE BROUGHT."

In Haggard v. Wallen, 6 Neb., 272, it was held: "In cases where the petition is defective for want of a material averment, and such averment is supplied by the answer and is not inconsistent with the averments in the petition, the defects in the petition will thereby be cured, at least after verdict and judgment thereon," citing Erwin v. Shaffer, 9 Ohio State, 44; Insurance Co. v. Kelly, 24 Ohio State, 365.

The fifth error assigned in plaintiff's brief is: "There is no allegation in either of the counts or causes of action to the petition that the indebtedness of the plaintiff below to the bank, as therein specified, has been paid; and, for aught alleged, the several transactions complained of are still in fieri."

As hereinbefore shown the exact opposite of the statement made is true, but in Lebanon National Bank v. Karmony, 98 Pa. St., 65, it is said: "If illegal interest be contracted for the debt shall bear no interest. If such

interest be paid the offending bank is liable in an action for twice the amount. THAT LIABILITY IS INCURRED THE MOMENT THE BANK TAKES THE ILLEGAL INTEREST."

In Monongahela National Bank v. Overholt, 96 Pa. St., 327, it was held that suit for the penalty could be maintained whether the debt had been paid or not, and it had not in that case.

Turning to the cases cited by plaintiff in error in its counsel's brief, we find that in Farmers' and Mechanics' Bank v. Dearing, 91 U. S., 29, the principal question decided is that the penalty prescribed in the Federal act, and not the penalties prescribed by State legislation in the State where the national bank is situated, governs. The court in that case, speaking by Mr. Justice Swayne, held that "It must always be borne in mind that the constitution of the United States, and 'the laws which shall be made in pursuance thereof, are the supreme law of the land' (Const., art. 6), and that this law is as much a part of the law of each State, and as binding upon its authorities and people as its own local constitution and laws. * * * The 30th section (5197 and 5198) is remedial as well as penal, and is to be liberally construed to effect the object which Congress had in view in enacting it," citing Gray v. Bennett, 3 Met., 522, 529.

It follows, and is certainly true, that it was no more necessary to plead in the State court of Nebraska the provisions of the law of the United States than to plead

the law of Nebraska, both of which are taken judicial notice of in such court. Yet, in plaintiff's brief counsel insists that a cause of action is not stated because section 5197 of the Revised Statutes of the United States was not referred to, and because defendant in error did not state "the rate of interest allowed in any case by the laws of the State of Nebraska," so that a court of Nebraska might be informed in the pleadings of what the law of Nebraska is. Certainly a novel purpose of pleading.

The cases cited in the brief of the plaintiff in error, although for the most part decided before the adoption of the more liberal rules of pleading provided under the code system, do not sustain the contention of counsel.

The case of Soper v. Hingham and Quincy Bridge and Turnpike Company, 4 Pick., 341, was a case where the plaintiff did not show in his declaration that he was a person belonging to the class of persons who were given a right of action by the statute under consideration, one "from whom toll is demandable," and the court held: "No person except one from whom toll is demandable, can sustain an action on that statute for an injury so sustained."

"The declaration in such an action should state that the plaintiff is a person from whom toll is demandable; and the want of such an averment, OR OF ALLEGATIONS

FROM WHICH THAT MAY BE INFERRED, is not cured by verdict."

Of the case, to which plaintiff's brief refers, cited by the court in that decision, the opinion says:

> The cases before cited sufficiently establish the rule, that where an action is given by statute, and in another section, or subsequent statute, exceptions are enacted, the plaintiff need not take notice of these exceptions in his count, but leave it to the defendant to set them up in his defense. But where the exception or limitation is contained in the same section which gives the right of action, the plaintiff must negative the application of them to his ground of action. Here unfortunately the qualification of the right of action is contained in the very section which gives the right.

In the case at bar, the exception, as the court will observe, is not contained in section 5198, the one giving the right of action, but in section 5197.

The case of Wayman, et al., v. Southard, et al., cited by plaintiff in error, was where the subject matter involved was the construction of a provision contained in the judiciary act of 1789, C. 20, relative to the issuing of writs by Federal courts, but it was distinctly held that the proviso under consideration was no exception to the enacting clause, which related to the subject under consideration, and has no application whatever to the question here under consideration.

In the case of Spiers v. Parker, where the exceptions in the act specified a number of ships, or different kinds of ships, and deserters from any such ships" might be

lawfully impressed into the service.

The exceptions in the act of Parliament specified a number of ships, or different kinds of ships, and deserters from "any such ship" might be lawfully impressed into the service. The defendant below was the captain in command of the warship Diamond. The declaration undertook to negative the exceptions by alleging that the mariner was not a deserter from the "war-ship called the Diamond." But the court held that the words, "any such ship," must be taken in connection with what went before, and when so taken meant "ships," such as specified in the exceptions, and that the declaration was fatally defective in that it failed to negative all the exceptions by alleging the mariner was not a deserter from any of his Majesty's ships.

Applying the principle to the averment under consideration, "was at a greater rate of interest than is allowed by the laws of Nebraska" do we not in effect say that from which it must be inferred that it was "at a greater rate than is allowed" by any of the laws of Nebraska including any possible exceptions?

The case of Soper v. The President, &c., of Harvard College, 1 Pick., 177, is a case where the action was brought upon statute 1819, c. 37, the first section of which provided that no livery-stable keeper "shall give credit to any under graduate of either of the colleges within this commonwealth without the consent of such officer or officers of the said colleges, respectively, as may be authorized to act in such cases by the government of the same, or in violation of such rules and regulations as shall

be from time to time established by the authority of said colleges, respectively." The 3d section gives an action on the case against the person giving credit to recover a sum equal to the amount which shall be so unlawfully credited. The court held:

> But, for errors manifest in this record, the judgment of the Circuit Court of Common Pleas must be reversed. It is not alleged in the declaration, that any rules have been established on the subject of the statute, nor that any officer has been authorized by the government of the college to give the consent which may be an excuse for the act of giving credit, though it is averred, that the credit was given without such consent. But we think the penalty is not incurred, unless some rules have been made on the subject of giving credit, nor unless some officer has been authorized to give or withhold consent, as the circumstances may require. The giving credit generally is not an offense, but only when it shall be done in violation of rules established by the government of the college. It is an essential fact, which ought to be averred, that such rules have been made.

Of course the State courts could not take judicial notice of whether the colleges had made rules, and what rules, if any. But in the case at bar, the Nebraska court was bound to take judicial notice of what the laws of Nebraska are upon the limitation of interest rates generally, or specially, if any exception in favor of banks of issue existed, as said in the North Carolina case above cited. And therein is the great difference between the Massachusetts case and this case, to say nothing about the more liberal rules of pleading which existed when nearly

all of the cases relied on by plaintiff in error were decided.

The case of Downe v. Simpson, 2 Mass., 444, cited by plaintiff, was where in a prosecution for bastardy, the appellate court considered the evidence in the case and in the opinion discussed the evidence as a basis of their decision, as also whether the proceedings in the case were removed by the proper writ, and finally quashed the proceedings for that reason, and the case was not decided upon the question of the insufficiency of the complaint, and the observation in this case, as in others cited by counsel, was a casual remark upon general rules and not the principle decided in the case.

Bigelow v. Johnson, 13 Johns., 428, was where the complaint set out a violation of one of the offenses contained in a section of the excise law, and upon the trial it appeared that he was, if at all, guilty of another offense named in the same section but not specified in the complaint. The judgment below was, therefore, reversed.

The case of Bartlett v. Crozier, 17 Johns., 440, another case cited by plaintiff in error, was where the action was brought against the overseer of highways for neglect to repair a bridge, and it was held that no right of action existed in favor of a citizen against an overseer or against the commissioners of highways, but if against either, the commissioners of highways. And if the

overseer defending were liable for neglect of duty, it was not shown that it was his duty to repair the bridge.

In Sheldon v. Clark, 1 Johns., 513, cited by plaintiff in error, the decision is flatly against the rule contended for in its brief, and it was held: "In an action against a person for practicing physic against the act, it is incumbent on the defendant to show himself within some of the provisions, and the plaintiff is not bound to negative the provisos in his declaration."

Barrett v. Muncie National Bank of Muncie, 98 U. S., 555, simply decided that the penalty provided by law can not be recouped or counter-claimed in an action brought upon the promissory note or bill of exchange upon which illegal interest was charged or taken.

In the brief of the plaintiff in error, at page 17, counsel contends that "None of the considerations herein presented to the court against the sufficiency of the complaint or petition of the plaintiff below, were called to the attention of the Supreme Court of Nebraska." In answer to this we direct attention to page 33 of the record, where plaintiff in error, upon the trial of the cause, objected to the introduction of any evidence under the petition on the ground that it does not state facts sufficient to constitute a cause of action. This objection was overruled and plaintiff duly excepted.

The sixteenth assignment in plaintiff's petition in er-

ror in the Supreme Court of Nebraska, is for "errors of law occuring at the trial and duly excepted to."

This, under the law and decisions in Nebraska, is a sufficient assignment to raise the question of the sufficiency of the petition, and did raise it, and the decision of that court, in law, covers the point, and is a construction of the law of pleading in that behalf in Nebraska, by the Supreme Court of that state.

The decision in the case of the First National Bank of Charlotte v. Morgan, above cited, was cited and urged in the Supreme Court of Nebraska in one of these cases, that of The Schuyler National Bank v. Hector C. Bollong, and the complaint was quoted in full in the brief there, as it is here. And plaintiff was not in ignorance of that decision when he brought error in that case to this court. And that the writ of error herein was sued out merely for delay, will appear, when we consider the attitude of the plaintiff in his brief, where it fully appears, as therein stated, (page 17) that "none of the considerations herein [therein] presented to the court, against the sufficiency of the complaint or petition of the [defendant] plaintiff below, were called to the attention of the Supreme Court of Nebraska." And the further fact that none of the numerous alleged errors which were urged in the Supreme Court of Nebraska are called to the attention of this

court, presumably because of their apparent weakness.

And that defendant, in this, and in each of the four cases involving the same questions, and each depending upon the determination of one case, should be awarded the costs contemplated in the 2d paragraph of Rule 23, seems clear. For that this case, one for debt, in view of the statute under which it is brought, and the decisions cited to show that the said statute is remedial rather than penal, entitling the defendant to all the consideration due one who brings an action at law for damages on contract or otherwise, is clear.

For the reasons given it is respectfully submitted that the judgment in the court below should be affirmed, with interest, the costs suggested, and the usual costs in the case. C. J. Sheep

Attorneys for defendant in Error.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 518.

THE SCHUYLER NATIONAL BANK OF SCHUYLER, NEBRASKA, Plaintiff in Error,

vs.

HECTOR C. BOLLONG, Defendant in Error.

Reply Brief of Defendant in Error.

The Supreme Court can review a judgment of a State court only when the right, privilege or immunity claimed under the Consitution * * * was specially set up and claimed in the State Court at the proper time and in the proper way.

This case, as presented to the Supreme Court, presents no Federal question.

It is true the record discloses and there was urged to the Supreme Court of Nebraska two Federal questions, viz: The jurisdiction of the State courts and the amount of recovery to which defendant in error was entitled to recover. (R., 4–5.)

The writ or error was, therefore, properly allowed by the justice of this court.

But these jurisdictional points were abandoned in this court for the reason doubtless that they were disposed of by this court in the case of First National Bank of Charlotte, N. C., *vs.* Morgan, 132 U. S., 141.

The plaintiff in error, at page 17 of its original brief, says: "None of the considerations here presented to the court